IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT NO. 5, MUMBAI BENCH

C.P. (IB) 2140/MB/2019

Under Section 8 & 9 of the IBC, 2016

In the matter of

Sairaj Doodh

Post Ranjangaon Sandas Taluka Shirur, Pune- 412211

.... Petitioner

v/s.

Miraj Dairy Private Limited

606/1, Chaitanya Sankul, 1st Lane, Shahupuri, Kolhapur, Maharashtra-416001

…. Corporate Debtor

Order Delivered on: 20.03.2020

Coram: Hon'ble Smt. Suchitra Kanuparthi, Member (Judicial)
Hon'ble Shri Chandra Bhan Singh, Member (Technical)

For the Petitioner: Mr. Yash Jariwala, Adv., i/b. Ram Rakhiani, Advocates.

For the Corporate Debtor: Mr. Mehul Thakkar, Advocate.

Per: Chandra Bhan Singh, Member (T)

ORDER

1. This Company Petition is filed by **Sairaj Doodh** (hereinafter called "Petitioner") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against **Miraj Dairy Private Limited** (hereinafter called "Corporate Debtor") alleging that Corporate Debtor committed default in making payment of ₹33,18,607/- by invoking the provisions of Section 8 and 9 of the Insolvency & Bankruptcy Code (hereinafter called "Code") read with Rule 5 and 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016. This Petition was filed on 06.06.2019.

2. The Petition reveals that the Petitioner used to supply milk to the Corporate Debtor on credit basis. The Corporate Debtor paid an advance sum of ₹23,10,903/- to the Petitioner. The Petitioner raised an invoice dated 30.09.2018 for total value of ₹56,29,510/- upon the Corporate Debtor pursuant to delivery of 2,14,110 Liters of milk. Hence, an amount of ₹33,18,607/- is still due for payment after deducting the advance money from the total principal amount. The Corporate Debtor failed and neglected to pay the amount due to the Petitioner.

3. On the account of non-payment of the due, the Petitioner issued demand notice dated 15.04.2019 in Form 3 under Section 8 of the I&B Code, 2016 to the Corporate Debtor demanding payment of ₹33,18,607/-. However, the Corporate Debtor failed to respond to the demand notice.

4. The Petitioner has annexed the copy of an invoice dated 30.09.2018 issued by the Petitioner as well as the delivery challans to confirm the delivery of milk. Also, the Petitioner has annexed copy of ledger account for financial year 01.04.2018 to 20.04.2019 of the Corporate Debtor and the bank statement of the Petitioner to show that no payment has been made by the Corporate Debtor towards the debt amount. The Petitioner also annexed an affidavit as required under Section 9(3)(b) of the Code.

5. The Counsel for the Corporate Debtor through its reply to the Petition stated that due to unfavorable market conditions and adverse competitive environment, they could not repay the said debt amount. Some of the relevant para of the Reply as submitted by the Corporate Debtor is as under:-

5.1. "I state that Operational Creditor have supplied tankers of milk from time to time and Corporate Debtor has raised issues for the supply of their products as the turnover of the Corporate Debtor become volatile due to unfavourable market situations."

5.2. "I state that due to bad market conditions, adverse competitive environment, slowdown of their business, death of large number of cattle due to heavy rain, Corporate Debtor failed repay the debt."

5.3. "I state that Corporate Debtor has made genuine efforts to repay the said amount but default has occurred only because of sluggish business environment in the entire sector, where Corporate Debtor is doing operation Corporate Debtor."

5.4. "I state that as stated above, there were various reasons viz. flood in the Kolhapur district, strikes by the farmers etc. has resulted into slow down of milk collection by the Corporate Debtor Company and resulted into losses to the Corporate Debtor and turned to cause downfall in the business of the Corporate Debtor and subsequently, Corporate Debtor failed to resist in the market."

6. On the perusal of the above facts, it is clear that the Corporate Debtor has defaulted in paying the outstanding amounts under the invoice claimed by the Petitioner. Hence, there is a clear debt and default.

7. This Bench having been satisfied with the application filed by the Operational Creditor which is in compliance of provisions of Section 8 & 9 of the Insolvency & Bankruptcy Code, admits this application declaring Moratorium with the directions as mentioned below:

(a) that this bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgement, decree or other in any court of law; transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein; 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; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

(b) that the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

(c) that the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(d) that the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the CIRP or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under section 33, as the case may be.

(e) that the public announcement of the CIRP shall be made immediately as specified under Section 13 of the Code.

(f) that this Bench hereby appoints Mr. Udaykumar Bhaskar Bhat, having Registration No. IBBI/IPA-001/IP/P-01425/2018-19/12234 as an Interim Resolution Professional to carry out the functions as mentioned under the Code.

8. The Registry is hereby directed to communicate this order to both the parties and to the Interim Resolution Professional immediately.

SD/-
Chandra Bhan Singh
Member (Technical)

SD/-
Suchitra Kanuparthi
Member (Judicial)