

**NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH**

(IB)-1412(ND)2019

IN THE MATTER OF:

M/s Ambe Agrofoods Private Limited.

H - 4, LGF, Green Park,

New Delhi-110016.

...Operational Creditor

VERSUS

M/s Eshal Foods Private Limited

JA - 809, 8th Floor

DLF Tower-A

Jasola District Centre,

New Delhi-110025

... Corporate Debtor

Section: 9 of IBC, 2016

Order Delivered on: 19.09.2019

Quorum:

SMT. INA MALHOTRA, HON'BLE MEMBER (J)

SHRI. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Petitioner : Mr. Gautam Singhal, Advocate

For the Respondent : None



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(IB)-762(ND)2019

M/s. Ambe Agrofoods Pvt. Ltd. vs M/s. Eshal Foods Pvt. Ltd.

ORDER

PER SHRI L. N. GUPTA, MEMBER (T)

The present petition is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by M/s Ambe Agrofoods Private Limited. (for brevity 'Operational Creditor') through its authorized representative Mr. Amit Raniwala, who is duly authorized vide Board Resolution dated 18.3.2019, with a prayer to initiate the Corporate Insolvency process against M/s Eshal Foods Pvt. Ltd. (for brevity 'Corporate Debtor').

2. The Operational Creditor namely, M/s Ambe Agrofoods Pvt. Ltd. is a Company incorporated under the provisions of Companies Act, 1956 with CIN No. 5311DL2012PTC243344, having its registered office at 63/1, H-4, LGF, Green Park, New Delhi-110016.

3. The Corporate Debtor namely, M/s Eshal Foods Private Limited is a Company incorporated on 24.02.2016 under the provisions of Companies Act, 2013 with CIN No. U51909DL2016PTC291561, having its registered Office at JA-809, 8th Floor, DLF Tower-A, Jasola District Centre New Delhi - 110025.



4. The Authorised Share Capital of the Respondent Company is Rs. 10,00,000 and Paid Up Share Capital of the Company is Rs. 1,00,000 as per the Master Data of the Company annexed.

5. It is the Operational Creditor's case that they had supplied *Chakki* Wheat Flour from 14.11.2018 to 06.02.2019 to the Corporate Debtor. It is submitted by them that the invoices were delivered and the same were accepted by the Corporate Debtor without any demur or protest whatsoever. They have further averred that the total amount claimed under the invoices is for a sum of Rs. 20,04,734.50 including interest @ 12 % per annum. The details of the invoices as submitted are reproduced below:

DATE	INVOICE NO.	AMOUNT
14.11.2018	A/GST/18-19/838	Rs. 239545
14.11.2018	A/GST/18-19/843	Rs.174825
16.11.2018	A/GST/18-19/986	Rs. 135664
21.12.2018	A/GST/18-19/1010	Rs. 174825
22.12.2018	A/GST/18-19/1031	Rs.174825
27.12.2018	A/GST/18-19/1086	Rs.174825
11.1.2019	A/GST/18-19/1090	Rs.174825
12.1.2019	A/GST/18-19/1096	Rs.174825
16.1.2019	A/GST/18-19/1113	Rs.175770
19.1.2019	A/GST/18-19/1176	Rs.177787.50
Total		Rs. 19,54,303.50

6. As per the Ledger Account Annexed by the Petitioner the last payment received by them was of Rs 2,15,000 on 05.02.2019.



7. It is stated by the Petitioner that since the Respondent Company had failed to liquidate its dues, it had sent a Demand Notice dated 26.03.2019, under Section 8 of IBC 2016 on 27.03.2019 vide Registered Post and E-mail to the Registered Office of the Respondent. They have added that the Demand Notice could not be served through Registered Post and the Courier, and the envelopes containing Demand Notice was received back with the remarks "Receiver not available", for the courier and "No such person in the address" for the Registered Post. However, it is submitted by the Petitioner that the Demand Notice was served through E-mail as mentioned in the Master Data of the Corporate Debtor Company.

8. That the Petitioner in their Affidavit under Section 9(3)(b) of IBC, 2016 had made specific averment regarding non-receipt of Notice of any dispute issued by the Respondent. Further, the Petitioner has annexed Certificate of HDFC Bank in compliance of Section 9(3) (c) of IBC, 2016 on 12.09.2019.

9. As none appeared on behalf of the Corporate Debtor Company during the proceedings, the Corporate Debtor was proceeded ex-parte vide order dated 23.07.2019 passed by this Tribunal.

10. In the given facts and circumstances, the present petition being complete and establishing the default in payment of the operational debt beyond doubt, the Petitioner is entitled to claim its dues. The amount of

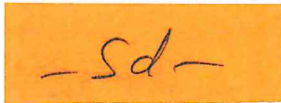
default being above Rs. 1,00,000 for the invoices, the Petition is admitted in terms of Section 9(5) of the IBC and accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequence of the moratorium in terms of Section 14(1) (a), (b), (c) & (d), the following prohibitions are imposed, which must be followed by all and sundry:

- “(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 Securitisation 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.”

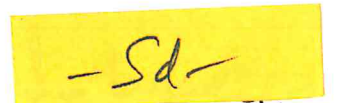
11. As proposed by the Petitioner, this Bench appoints Sh. Rajesh Kumar Gupta, having his office at F-43, Dilshad Colony East, Delhi-110095 (email id- rgadv21@gmail.com) and Registration No. IBBI/IPA-003/IP-N00198/2018-19/12308, subject to the condition that no disciplinary proceedings are pending against the IRP so named and disclosures as required under IBBI Regulations, 2016 are made him within a period of one week from this Order. The IRP is directed to take the steps as mandated under the IBC specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016.

12. The Operational Creditor is directed to deposit Rs.1,00,000 (One Lakh) only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional and shall be paid back to the Operational Creditor.

13. In terms of the above, 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 this Order shall be communicated to the Applicant, the Respondent and the IRP mentioned above by the Registry of this Tribunal. In addition, a copy of the Order shall also be forwarded by the Registry to IBBI for their records.



(L. N. Gupta)
Member (T)



(Ina Malhotra)
Member (J)