

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH – I**

CP (IB) 2385/MB/2019

Under section 9 of the Insolvency and Bankruptcy
Code, 2016

Horizon Agrotech

**Address for Correspondence: Gat No.232, Jaulke
Village, 10th Mile, Nasik – Ozar Road,
Dindori, Nasik. Maharashtra State**

...Operational Creditor/Petitioner

Versus

Uttara Foods And Feeds Private Limited

[CIN: U15332MH1996PTC099964]

Reg. Office: Venkateshwara House, S. No. 114A2,
Pune Sinhagad Road, Pune Mh 411030

...Corporate Debtor/Respondent

Order Delivered on 23.06.2023

Coram:

Hon'ble Member (Judicial) : Mr. H. V. Subba Roa

Hon'ble Member (Technical): Mr. Shyam Babu Gautam

Appearances:

For the Operational Creditor : Adv. Pooja Yadav i/b Jayakar &
Partners Advocates

For the Corporate Debtor : Adv. Sunny Shah i/b Hemant Sethi
Advocates

ORDER

Per: Shyam Babu Gautam, Member (Technical)

1. This Company Petition is filed under section 9 (“**the Petition**”) of the Insolvency and Bankruptcy Code, 2016 (**IBC**) by **Horizon Agrotech** (“**the Operational Creditor**”), seeking to initiate Corporate Insolvency

Resolution Process (CIRP) against **Uttara Foods And Feeds Private Limited ("the Corporate Debtor")**.

2. The Corporate Debtor was incorporated 04/06/1996 under the Companies Act, 1956. It has its registered Office situated at Venkateshwara House, S. No. 114A2, Pune Sinhagad Road, Pune - 411030 Mh Therefore, this Bench has jurisdiction to deal with this petition.

Brief Facts of the case:

3. The present petition was filed on 21.06.2019 before this Adjudicating Authority (AA) on the ground that the Corporate Debtor failed to make payment of a sum of INR 2,35,476/- (INR Two lakhs Thirty-Five thousand Four hundred Seventy-six only) towards goods being “Animal Feed Product”, provided to Corporate Debtor and subsequent invoices raised by Operational Creditor along with interest at the rate of 30% p.a. from the date of the Invoice /Bill of Supply raised by the Operational Creditor against the supply of goods provided by the Operational Creditor to the Corporate Debtor. The date of default is 15.12.2016.

Submissions made by Operational Creditor:

4. The Counsel for the Operational Creditor submits that the Operational Creditor from time to time provided goods to the Corporate Debtor and subsequently raised Invoices/ Bills of Supply, amounting to Rs.8,40,005/- (Rupees Eight lakhs Forty thousand Five hundred only) against supply of such services. Copies of the Invoices raised are marked and annexed to this Petition as **Exhibit – C (pgs 16-36)**.
5. The Operational Creditor further submits that the Corporate Debtor, has paid an amount of Rs.6,04,529/- (Rupees Six lakhs Four thousand and Five hundred Twenty-Nine only) against the aforesaid consideration of

Rs.8,40,005/- over a period of time through State Bank of India, Cidco Colony (Vilholi) Branch, maintained with the said Bank. The Certified Bank statement of State Bank of India also indicates the payment received from the Corporate Debtor. Copies of Bank Statements are annexed to the Petition and marked as **Exhibit -D (pgs 37-424)**. However, the balance consideration of Rs.2,35,476/- (Rupees Two lakh Thirty-Five thousand Four hundred Seventy-Six only) is due and payable by the Corporate Debtor.

6. The Operational Creditor further submits that the liability to pay was admitted by the Corporate Debtor through the Purchase Orders raised by them upon Operational Creditor. Furthermore, the partial payment of Rs.6,04,529/- made by the Corporate Debtor to the Operational Creditor amounts to admission of liability. Moreover, till date the Corporate Debtor has not raised any quality issues as far as the goods are concerned.
7. The Operational Creditor raised the following Invoices on Corporate Debtor on the following dates:

Sr. No.	Bill No.	Bill Date	Amount Payable
1.	785	21.01.2014	11,250
2.	786	21.01.2014	12,390
3.	787	21.01.2014	6,750
4.	882	22.03.2014	14,455
5.	883	22.03.2014	10,750
6.	34	12.04.2014	30,220
7.	87	03.05.2014	12,600
8.	86	04.05.2014	6,750
9.	148	23.05.2014	27,000
10.	147	23.05.2014	50,400

11.	155	26.05.2014	26,040
12.	219	21.06.2014	45,900
13.	218	21.06.2014	13,500
14.	222	21.06.2014	43,000
15.	416	28.08.2014	1,36,500
16.	556	02.11.2014	1,45,250
17.	585	13.11.2014	54,020
18.	AH/008	10.12.2014	78,900
19.	AH/011	18.12.2014	31,200
20.	AH/027	28.01.2015	40,000
21.	AH/032	09.02.2015	43,130
TOTAL			8,40,005

Out of the aforesaid amounts mentioned in the Tax Invoices, Corporate Debtor made payment of Rs.6,04,529/- on following dates:

Sr. No.	Date	Amount Paid
1.	06.06.2014	30,390
2.	11.07.2014	25,205
3.	22.08.2014	49,570
4.	22.08.2014	50,400
5.	15.10.2014	34,000
6.	05.11.2014	50,000
7.	07.11.2014	48,940
8.	19.12.2014	43,000
9.	06.01.2015	96,204
10.	07.02.2015	1,04,000
11.	16.04.2015	22,820
12.	15.12.2016	50,000
Total		6,04,529

8. The Operational Creditor submits that they addressed various communications to Corporate Debtor asking for payments to be made. The Operational Creditor craves leave to refer to and rely upon the relevant communication as and when required.
9. It is further submitted that pursuant to the goods provided by the Operational Creditor and subsequent Invoices raised as mentioned above, an amount of Rs.2,35,476/- (Rupees Two lakh Thirty-Five thousand Four hundred Seventy-Six only) remained due from the Corporate Debtor along with interest at the rate of 30% p.a. from the date of last payment received till the realization of the outstanding dues.
10. A Demand Notice under Sec.8 of the IB Code, 2016 dated 19.02.2019 was issued to the Corporate Debtor to clear the debt of Rs.2,35,466/-. Copy of the Demand Notice is annexed to the Petition and marked as **Exhibit – E (pg 425-434)** along with the Courier tracking receipt evidencing the delivery of the Demand Notice upon the Corporate Debtor.
11. The Corporate Debtor has not replied the Demand Notice and hence not brought to the notice of the Operational Creditor (a) the existence of dispute, if any, and record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute; and (b) the repayment of unpaid operational debt (i) by sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the Corporate Debtor ; or (ii) by sending an attested copy of record that the operational creditor has encashed a cheque issued by the Corporate Debtor, as per Section 8(2) of the Code. Till date, the Corporate Debtor has made no payment towards the Invoices raised upon them other than the payment specifically mentioned hereinabove. The payment was made on the due

date of the Invoice raised. The first tax Invoice was raised on 21.01.2014 of Rs.11,250/- and the last Invoice was raised on 09.02.2015 for Rs.43,130/-, and the last payment made by the Corporate Debtor was on **15.12.2016**. Ledger Account for the years 2013-14, 2014-15, 2015-16 & 2016-17 are annexed to the Petition as **Exhibit – F – colly (pgs. 435-437)**.

Reply by the Corporate Debtor:

12. The Corporate Debtor states that the Company Petition is hopelessly barred by limitation, and thus ought to be dismissed.
13. The Corporate Debtor submits that the Operational Creditor has alleged Rs.2,35,476/- was due from the following invoices raised by them:

Sr. No.	Bill No.	Bill Date	Amount payable
1.	785	21.01.2014	11250
2.	786	21.01.2014	12390
3.	787	21.01.2014	6750
4.	882	22.03.2014	14455
5.	883	22.03.2014	10750
6.	34	12.04.2014	30220
7.	87	03.05.014	12600
8.	86	04.05.2014	6750
9.	148	23.05.2014	27000
10.	147	23.05.2014	50400
11.	155	26.05.2016	26040
12.	219	21.06.2014	45900
13.	218	21.06.2014	13500
14.	222	21.06.2014	43000

15.	416	28.08.2014	136500
16.	556	02.11.2014	145250
17.	585	13.11.2014	54020
18.	AH/008	10.12.2014	78900
19.	AH/011	18.12.2014	31200
20.	AH/027	28.01.2015	40000
21.	AH/032	09.02.2015	43130

The Corporate Debtor submits that from the perusal of the invoices it is evident that the last invoice was raised on 09.02.2015, and payment for the last invoice was due by 11.03.2015. The Company Petition was filed on 10.05.2019 i.e. beyond the three years of law of limitation, and thus the Company Petition is hopelessly barred by limitation.

14. The Corporate Debtor further submits that the Operational Creditor has sought to allege that the Corporate Debtor has made partial payment of Rs.6,04,529/- towards the abovementioned invoices, and has provided the details of the payments made. The Corporate Debtor further states that it is evident that the payments made are not partial, but complete payments, which is evident from the following table:

S. No.	Bill No.	Bill Date	Amount Payable	Payment date	Amount Paid
1.	785	21.01.2014	11250	06.06.2014	30390
2.	786	21.01.2014	12390		
3.	787	21.01.2014	6750		
4.	882	22.03.2014	14455	11.07.2014	25205
5.	883	22.03.2014	10750		
6.	34	12.04.2014	30220	22.08.2014	49570
7.	87	03.05.2014	12600		
8.	86	04.05.2014	6750		
9.	148	23.05.2014	27000	05.11.2014	50000

				07.11.2014	48940 Total : 98940
10.	147	23.05.2014	50400	22.08.2014	50400
11.	155	26.05.2016	26040	<i>Note: Payments towards Invoices at Serial No.9, 11 and 12 were made together.</i>	
12.	219	21.06.2016	45900		
13.	218	21.06.2014	13500	<i>Note : Payments towards Invoices at Serial No.13 and 16 were made together.</i>	
14.	222	21.06.2014	43000	19.12.2014	43000
15.	416	28.08.2014	136500	15.10.2014 06.01.2015	34000 96204 Total: 130204*
16.	556	02.11.2014	145250 (104000 + 41250)	07.02.2015 15.12.2016	104000 50000* Total: 154000
17.	585	13.11.2014	54020		
18.	AH/008	10.12.2014	78900		
19.	AH/011	18.12.2014	31200		
20.	AH/027	28.01.2015	40000		
21.	AH/032	09.02.2015	43130		

- An amount of Rs.6296 was wrongly billed in Invoice No.15
- From the said amount, Rs.41250 was towards Invoice at Serial No. 116, and Rs.8750 was towards Invoice at Serial No.13.

15. The Corporate Debtor submits that from the above Table, it is evident that the payments directed to respective invoice(s) have been made, and not partial payments in general towards all the above-mentioned invoices. The payments of Rs.30,390 made on 06.06.2014 is the exact value of the combined invoice value of Invoices at Serial Nos. 1 to 3, and could not have been partial payments towards invoices at serial Nos.12 to 21, which were raised subsequent to 06.06.2014. Further, payment of

Rs.25,205/- made on 11.07.2014 is the exact value of the combined invoice value of Invoices at Serial No.4 and 5 and could not have been partial payments towards invoices at Serial Nos. 15 to 21, which were raised after 11.07.2014. Further, it is evident that the entire payment for Invoices at Sr.Nos.1 to 16 have been made (barring invoice at Sr.No.13 and 15, for which amount was discounted due to wrongful billing). Thus, the Operational Creditor's grievance could only be towards Invoices at Sr. No.17 to 21. As the Invoices were raised more than three years prior to the filing of the Company Petition, the Petition is barred by limitation, and ought to be dismissed.

16. The Corporate Debtor submits that the Operational Creditor has alleged that the Corporate Debtor is liable to pay interest at the rate of 30% p.a. from the date of last payment received till the date of realization of outstanding dues. It is further submitted that the Corporate Debtor never agreed upon the said rate of interest, and the Petitioner cannot unilaterally charge such rate of interest. Further, Section 5(8) of the I&B Code defines "financial debt" as 'debt along with interest', Section 5(21) of the Code, in its definition of 'operational debt' does not include, hence it is alleged that no interest is payable.
17. With reference to Part IV (1), the Corporate Debtor denies that an amount of Rs.2,35,476/- or any amount is due to the Petitioner along with interest at the rate of 30% p.a. from the date of last payment received till the date of realization of alleged outstanding dues.
18. The Corporate Debtor also denies that an amount of Rs.8,40,005/- is payable pursuant to the goods provided by the Operational Creditor. The Corporate Debtor states that it is evident from the above table that the payments have been made regularly for the invoices raised and no ad-hoc payments towards alleged amount claimed to be due. Since the

claim is a time barred by limitation, the Financial Creditor desperately making attempt to club all the invoices.

19. It is also denied that out of the aforesaid consideration of Rs.8,40,005/- an amount of Rs.6,04,529/- was paid by the Corporate Debtor to the Operational Creditor over a period of time, as at no point of time an amount of Rs.8,40,005/- was due hence, there is no question of Rs.6,04,529/- being paid towards the consideration of Rs.8,40,005/-.
20. The Corporate Debtor denies that balance consideration of Rs.2,35,476/- is due to the Operational Creditor.
21. The Corporate Debtor states that it is correct that the Operational Creditor raised invoices on the Corporate Debtor, and the Corporate Debtor made the payment of Rs.6,04,529/- in the manner as per the table provided therein. It is submitted that it is evident on a bare perusal of the amount payable as per each invoice and the amount of payment made by the Corporate Debtor, were towards the entire payment of the invoices and not partial payment has been sought, thus the last payment made on 15.12.2016 cannot extend the period of limitation.
22. With reference to Part IV (2), it is denied that pursuant to the goods provided by the Operational Creditor, a balance of amount of Rs.2,35,476/- is due with interest at the rate of 30% p.a. from the last date of the payment. It is also denied that the date on which default occurred was 15.12.2016.

Findings:

23. We have heard the submissions of the Counsels and perused the records.
24. Upon perusal of records it is noted that the invoices attached with the petition are of 2015 and petition was filed in 2019 therefore the debt is

time barred. Hence on account of prima facie observation debt being time barred there is no need to further go into merits of the case.

25. The petition bearing **CP (IB) 2385/MB/C-I/2019** filed by **Horizon Agrotech**, the Operational Creditor, under section 9 of the IBC read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Uttara Foods and Feeds Private Limited [CIN: U15332MH1996PTC099964]**, the Corporate Debtor, is **Rejected**.

Sd/-
SHYAM BABU GAUTAM
Member (Technical)
23.06.2023
SAM

Sd/-
H. V. SUBBA RAO
Member (Judicial)