

5

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH
SPECIAL BENCH (Video Conference)**

PRESENT: HON'BLE SHRI BHASKARA PANTULA MOHAN – MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 24.8.2020 AT 10.30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	CP(IB) NO. 221/9/AMR/2019
NAME OF THE COMPANY	Panda Dairy Products Pvt Ltd
NAME OF THE PETITIONER(S)	Nakoda Dairy Pvt Ltd
NAME OF THE RESPONDENT(S)	Panda Dairy Products Pvt Ltd
UNDER SECTION	9 OF IBC

Counsel for Petitioner(s):

Ries	Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

Counsel for Respondent(s):

Ries	Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

ORDER

Order pronounced vide separate sheets. CP admitted.

Sd/-

MEMBER JUDICIAL

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH**

CP (IB) No.221/9/AMR/2019
Under section 9 of the IB Code, 2016
Read with Rule 6 of the Insolvency and Bankruptcy
(Application to Adjudicating Authority) Rules, 2016

In the matter of:-

M/s. Panda Dairy Products Private Limited

M/s. Nakoda Dairy Private Limited,
Regd. Office: # 11/1, KR Road,
Next To Basavanagudi Post Office,
Bangalore -560 004.

...Petitioner/
Operational Creditor

Versus

M/s. Panda Dairy Products Private Limited,
Regd. Office: Door No:57, Chaitanyapuri Main Road,
Beside Santosh Mansion Apartment,
Guntur, Andhra Pradesh - 522 007.

...Respondent/
Corporate Debtor

Order delivered on: 24.08.2020

Coram: Shri.Bhaskara Pantula Mohan, Member Judicial

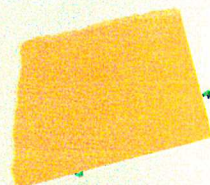
Parties/Counsel Present:

For the Petitioner/
Operational Creditor

: *Ms.Rubaina S Khatoon, Counsel.*

For the Respondent/
Corporate Debtor

: *None (ex-parte).*



Per: Shri.Bhaskara Pantula Mohan, Member Judicial

ORDER

1. Under consideration is a Company Petition filed by M/s. Nakoda Dairy Private Limited (in short, 'Petitioner/Operational Creditor') against M/s. Panda Dairy Products Private Limited (in short, 'Respondent/Corporate Debtor') under section 9 of the Insolvency and Bankruptcy Code 2016 (in short, I & B Code 2016) Read with Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity, '**IB Rules 2016**').
2. The Petitioner Company is having its Regd. Office at # 11/1, KR Road, Bangalore. The Respondent/Corporate Debtor is a Company registered under the Companies Act, 1956 having its Registered Office # Door No:57, Chaitanyapuri Main Road, Guntur, Andhra Pradesh.
3. The learned counsel appearing on behalf of the Petitioner/Operational Creditor stated that the Respondent/Corporate Debtor had placed a Purchase Order on the Petitioner/OC on 23.04.2019 for purchase of 8,000 Kilograms of Skimmed Milk Powder at the rate of INR.215/- + 5 % GST Per Kilogram, totalling to INR.18,06,000/- (Rupees Eighteen Lakhs Six Thousand Only).
4. It is also stated that in furtherance of the above, the Petitioner/OC had supplied 8,000 Kilograms of Skimmed Milk Powder to the Respondent/CD. Towards the above the Petitioner/OC has raised an invoice for a sum of INR.18,06,000/-. The said amount was to be paid within 30 days from the invoice date. Out of the said amount, an amount of INR.11,40,000/- (Rupees Eleven Lakhs Forty Thousand Only) is currently outstanding.
5. It is also stated that, in addition to the same the Respondent/CD is also liable to pay interest at @18 % per annum from the date of default till the date of payment. As on 11.07.2019 the Respondent/CD is due an amount of INR. 42,494/- (Rupees Forty Two Thousand Four Hundred and Ninety Four Only) towards interest on the balance unpaid amount. The Respondent/CD is totally due an amount of INR.11,82,494/-

(Rupees Eleven Lakhs Eighty Two Thousand Four Hundred and Ninety-Four only) as on 11.07.2019. The Corporate Debtor is also liable to pay interest from 12.07.2019 to till date to the Operational Creditor. The Corporate Debtor has accepted the goods supplied by the Operational Creditor and has neither raised any dispute relating to the quantity of goods not in relation to the amount claimed in the invoice. In fact, the Corporate Debtor had addressed a letter on 14.06.2019 to the Operational Creditor admitting to the outstanding liability towards the invoice and requested for some time to pay. But however, the complete payment has not been made till date.

6. It is also submitted that a statement showing the date on which the invoice was raised, the date of receipt of invoice by the Corporate Debtor, date of default and total amount due from the Corporate Debtor is produced as Annexure-III.
7. It is averred that after supply of the goods, the Operational Creditor followed up with the payment and the Corporate Debtor has addressed a letter on 14.06.2019 to the Operational Creditor admitting the outstanding liability towards the invoice and requested for some time to pay till 01.07.2019. However, no payment was made even by 01.07.2019 and thereafter the Operational Creditor kept following up by issuing many reminder emails to the Corporate Debtor, but even thereafter, the complete payments are not made by the Corporate Debtor and it has defaulted in payments. Apart from the Corporate Debtor not raising any dispute and admitting to the invoice already issued by the operational, creditor and its liability as afore mentioned, the operational creditor had on 19.07.2019 issued a notice under Form-4 with which invoice demanding payment. Though the same has been delivered to the Corporate Debtor, the Corporate Debtor has failed and defaulted to make complete payment of the amounts due and to reply to the said notice.
8. Therefore, the Respondent/CD thus failed to repay the legal debt, due and payable to the Petitioner/OC.

9. It is stated by the Petitioner/OC that there exists a debt in as much as that the Respondent/CD has failed to pay due of INR.11,82,494/- (Rupees Eleven Lakhs Eighty Two Thousand Four Hundred and Ninety-Four only) to the Operational Creditor in respect of the goods supplied and interest thereon. The legal debt thus stands alive and undischarged and prayed to admit the present Application made by this Operational Creditor for initiation of Corporate Insolvency Resolution Process and to pass such order or orders or other order/s that this Adjudicating Authority may deem fit and proper in the circumstances of the case and in the interest of justice.
10. The Learned Counsel for the Petitioner/Operational Creditor referred to copy of several documents attached with the application in order to prove the existence of Operational Debt and amount in default. These are as listed below:
- “ i) Purchase Order vide no. PO Number:PDPPL/2018-19/PO-23 placed by the Respondent/CD on the Petitioner/OC dated 23.04.2019.*
 - ii) Tax Invoice raised by the Petitioner/OC on the Respondent/OC vide no.IG/19098 dated 23.04.2019.*
 - iii) A statement showing the date on which the invoice was raised, the date of receipt of invoice by the Respondent/CD, date of default and total amount due from the Respondent/CD.*
 - iv) Statement of Bank Account vide A/c No.1325115000002407 Karur Vysya Bank, Basavanagudi Branch, Bangalore of Petitioner/OC from 19.08.2019 to 21.08.2019.*
 - v) Statement of Bank Account vide A/c No.9613524781 Kotak Mahindra Bank, M.G Road Branch, Bangalore of Petitioner/OC for a period from 01.04.2019 to 02.10.2019.*
 - vi) A Copy of the letter by the Corporate Debtor has addressed on 14.06.2019 to the Operational Creditor admitting the outstanding liability towards the invoice and requested for some time to pay till 01.07.2019.*
 - vii) Copies of reminder emails addressed to the Corporate Debtor by the Petitioner/OC dated 11.07.2019.*
 - viii) Copy of the ledger maintained by the Petitioner/OC from 01.04.2019 to 16.10.2019.*
 - ix) Copy of Notice Form 4 invoice demanding payment.”*

11. The matter was posted for hearing on various dates from 13.12.2019 to 20.07.2020, but there has been no representation by the Respondent. This Adjudicating Authority has also ordered notices which was carried out accordingly by the Petitioner. However, there has been no representation on behalf of the Respondent. Having satisfied with the proof of service of notice on the Respondent/CD held sufficient, respondent was proceeded *ex-parte* on 20.02.2020.
12. After hearing submissions of the counsel for the Petitioner/Operational Creditor and having perused the record, this Adjudicating Authority is satisfied that the Petitioner has proved its case by placing evidence that default has occurred for which the Corporate Debtor was liable to pay. The Petitioner has also placed on record proof of sending notices to the Respondent/CD for his appearance and for making submissions along with other material papers. The Petitioner has complied with all the requirements as stipulated under the provisions of the IB Code, 2016 for the purpose of initiating Corporate Insolvency Resolution Process. In these circumstances, having satisfied with the submissions made by the Petitioner/OC this Adjudicating Authority is inclined to admit the instant Petition.
13. Accordingly, the instant petition is hereby admitted and this Adjudicating Authority orders the commencement of the Corporate Insolvency Resolution Process which shall ordinarily get completed within the timelines stipulated in the IB Code, 2016 (as amended), reckoning from the day this order is passed.
14. This Adjudicating Authority hereby Appoint Mr. Chakravarthi Srinivasan, as IRP. The IRP is directed to take charge of the Respondent Corporate Debtor's management immediately. He is also directed to cause public announcement as prescribed under Section 15 of the Insolvency and Bankruptcy Code, 2016 within three days from the date the copy of this order is received, and call for submissions of claim in the manner as prescribed.10. The moratorium is hereby declared which shall have effect from the date of this Order till the completion of Corporate Insolvency Resolution Process, for the purposes referred to in Section 14

of the I & B Code, 2016. It is hereby ordered to prohibit all of the following, namely:-

- 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 (54 of 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.*

15. However, the supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. Further, the provision of Sub-section (1) of Section 14 shall not apply to such transaction, as notified by the Central Government.

16. 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 is expected to extend all assistance and cooperation to the IRP as stipulated under Section 19 and for discharging his function under Section 20 of the I & B Code, 2016.

17. The Operational Creditor and the Registry are directed to send the copy of this Order to IRP so that he could take charge of the Corporate Debtor's

assets etc., and make compliance with this Order as per the provisions of I & B Code, 2016.

18. The Registry is directed to communicate this Order to the Operational Creditor and the Corporate Debtor.
19. The Registry shall also communicate this order to ROC, Hyderabad for updating the status of Corporate Debtor in MCA Website.

20. The detailed address of the IRP is as follows:-

Mr. Chakravarthi Srinivasan
Address : 1-4-211/42/1,
Pradhamapuri, Colony,
Sainikpuri ,Hyderabad,
Telangana – 500 062.

Email: csriniirp@gmail.com

Cell:9849225054

Reg. No: IBBI/IPA- IBBI/IPA-002/IP-N00649/2018-2019/11990.

21. The present Petition bearing CP(IB) No.221/9/AMR/2019 is hereby admitted.

Sd/-

BHASKARA PANTULA MOHAN
MEMBER JUDICIAL

Sravan