THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, COURT-I, CHANDIGARH
(Exercising powers of Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016)
(*through web-based video conferencing platform*)

CP (IB) No. 80/Chd/Pb/2023

Under Section 9 of IBC, 2016

In the matter of C.P. (IB) No. 80/Chd/Pb/2023
M/s Verbio India Pvt. Ltd.
Having its Registered Office at
Godrej Eternia Building
Plot No. 70, Tower-A
Office No. W3M, 3rd Floor
Commercial Complex, Industrial Area
Phase-1, Chandigarh- 160002

...Petitioner/Operational Creditor

Vs.

M/s Farm2Energy Private Limited
Having its registered office at
VPO Bija, Tehsil Khanna
District- Ludhiana - 141401

...Respondent/Corporate Debtor

Judgement delivered on: 09.09.2024

Coram: HON'BLE SH. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE SH. D. ARVIND, MEMBER (TECHNICAL)

Present:

For the Petitioner/Operational Creditor: Mr. Lalit Kakkar, Advocate

For the Respondent/ Corporate Debtor: ex-parte vide order dated 10.06.2024

Per: Sh. Harnam Singh Thakur, Member (Judicial)
Sh. D. Arvind, Member (Technical)

JUDGEMENT

The instant application has been filed by M/s Verbio India Private Limited, (hereinafter referred to as **"Operational Creditor/Operational Creditor"**) against M/s Farm2Eergy Private Limited (hereinafter referred to as **"Corporate Debtor/Corporate Debtor"**) under Section 9 of The Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as **"the Code**"), read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, seeking initiation of the Corporate Insolvency Resolution Process in respect of the Corporate Debtor on account of default in the payment of Rs. 1,19,53,864/- (Rupees One Crores Nineteen Lacs Fifty-Three Thousand Eight Hundred Sixty Four only) by the Corporate Debtor, along with interest at the rate of 9 % per annum calculated as Rs. 1,38,534 for the period 16.12.202 to 31.01.2023 and up to the date of realization till the final disposal of the application.

2. It is averred that the Operational Creditor entered into an agreement with the Corporate Debtor for supply of paddy biomass. The agreement was accompanied by a deed of hypothecation of goods executed by the Corporate Debtor. The total consideration amount agreed between the parties was Rs. 4,40,00,000/- for supply of 20,000 tonnes of biomass bales. However, despite

of an advance payment of Rs. 1,19,53,864, the Corporate Debtor did not make any supply and could supply material worth Rs. 34,46,136.

i. A legal notice was served upon the Corporate Debtor for refund of Rs. 1,19,53,864/- followed by a statutory demand notice dated 17.01.2023, under Section 8 of the Code.

ii. The date of default as mentioned in Part IV of the petition is 16.12.2022.

3. Notice was issued to the Corporate Debtor as to why the said petition should not be admitted. An affidavit of service dated 02.08.2023 was filed vide diary no. 00540/01 and 00540/02. The Corporate Debtor in its reply dated 08.02.2024 filed vide diary no. 00540/4, submitted that as per the agreement dated 19.07.2022 executed between the Operational Creditor and the Corporate Debtor, whereby the Corporate Debtor received 35% of the agreement as an advance and started the supply of biomass bales from 28.10.2022. As per the agreement, the time period for the supply of the material was from 15.09.2022 to 15.12.2022, but , Mr. Ashish Kumar, MD of the Operational Creditor, intentionally denied to accept some of the biomass bales. Initially, the Operational Creditor accepted 5 to 6 trolleys of biomass bales in a selective mode and rejected most of the supply on the basis of grading, linked to moisture. However, the Operational Creditor accepted the bales which were prepared from its own equipment.

i. The Corporate Debtor tried to contact the Operational Creditor physically and by email regarding the act and conduct of

Operational Creditor but the Operational Creditor was not ready to accept the grievance of the Corporate Debtor.

ii. The Corporate Debtor received an advance payment of Rs. 1,54,00,000/- out of the total agreement for Rs. 4,40,00,000/-, out of which, Corporate Debtor did work for Rs. 2,20,00,000/- as 10000 tones of biomass bales were supplied at the centre of the Operational Creditor. The Operational Creditor is liable to pay Rs. 66,00,000/- to the Corporate Debtor.

4. The Operational Creditor, in its rejoinder dated 05.08.2024, filed vide diary no. 00540/5 stated that no authorization letter has come forth along with the written statement in favour of the person who has appended his signatures and has filed the affidavit-in-support of the written statement.

i. The Operational Creditor submitted that the Corporate Debtor's contention that Sh. Ashish Kumar, MD only to harass the Corporate Debtor denied accepting the biomass orally and sometives gave rejection slip to the Corporate Debtor, is only to hinder or disturb the Agreement.

ii. The Operational Creditor served a Legal notice dated 06.01.2023 and had requested the Corporate Debtor to provide a Schedule of repayment/refund but the Operational Creditor has not received any response.

iii. A statutory demand notice dated 17.01.2023 was also served upon the Corporate Debtor . for the period 19.01.2022 till 29.01.2022 (10 days statutory period), the Corporate Debtor did not raise any objection as regards the claim of the Operational Creditor. Neither the Operational Creditor received any notice of dispute nor received any amount as claimed in the demand notice.

iv. Further, no bill is placed on record by the Corporate Debtor to support its claim that it had supplied biomass bales worth Rs. 2,20,00,000/-.

5. Written submissions dated 29.04.2024, were filed by the Operational Creditor vide diary no. 00540/6, reiterating the facts of the petition and rejoinder.

6. After hearing both parties and a careful perusal of the records produced before us, the date of default as mentioned in Part IV of the Petition is 16.12.2022 and the petition was filed on 03.03.2023, which is well within the period of limitation of three years. The registered office of the Corporate Debtor is situated in the state of Punjab; hence, the jurisdiction to preside over the matter lies with this Adjudicating Authority.

It is pertinent to note that despite repeated calls, none appeared on behalf of the Corporate Debtor and he was proceeded ex-parte vide order dated 10.06.2024.

7. The moot question involved in the present case if whether the Corporate Debtor defaulted in the payment of the debt as claimed by the Opertaional Creditor.

It could be seen that an advance payment of Rs. 1,54,00,000/- was made to the Corporate Debtor, which is not disputed by either party. It is contended by the Ld. Counsel for the Petitioner that supply worth Rs. 34,46,136 only was made by the Corporate Debtor, whereas the Corporate Debtor contended that it had supplied material worth Rs. 2,20,00,000/-, however, the Corporate Debtor had miserably failed to produce any cogent evidence on record to support his claim. Further, Corporate Debtor's contention that the material was rejected by Operational Creditor's representative on selective basis is also not much convincing because as per the Agreement dated 19.07.2022 executed between the parties, Operational Creditor reserves the sole right to accept or reject the volume of material supplied by Corporate Debtor which doesn't comply to the quality scope of the agreement. Furthermore, the Corporate Debtor did not reply to the legal notice dated 06.01.2023 and the demand notice dated 17.01.2023 issued by the Operational Creditor.

8. In the light of the discussion forgoing as well as the rival contentions and allegations, this Adjudicating Authority finds that the debt exists and default has occurred on account of the Corporate Debtor..

9. It is noted that the corporate debtor has failed to payback the aforesaid amount due as mentioned in the statutory notice till date. Thus, the conditions under Section 9 of the Code stand satisfied. It is evident from the aforesaid discussed facts that the liability of the corporate debtor is undisputed. Accordingly, the petitioner proved the debt and the default, which are above the threshold limit. In view of the satisfaction of the conditions

provided for in Section 9(5)(i) of the Code, we admit the petition for initiation of the CIR Process in the case of the Corporate Debtor, **Farm2Energy Private Limited** and also direct moratorium to take effect and appoint Interim Resolution Professional as below.

10. In Part III of Form No. 5, no Interim Resolution Professional (IRP) has been proposed by the petitioner. The Law Research Associate of this Tribunal has checked the credentials of Mr. Harish Malhotra , wherein his AFA Certification is valid upto 30.06.2025 and there is nothing adverse against him. In view of the above, we appoint Mr. Harish Malhotra , Registration No. IBBI/IPA-001/IP-P00728/2017-2018/11223 , E-mail: ca.harish@gmail.com , Mobile No. 9876503199, the Interim Resolution Professional with the following directions:-

i. The term of appointment of Mr. Harish Malhotra shall be in accordance

ii. with the provisions of Section 16(5) of the Code; subject to his written consent to be filed within 7 days of this order;

iii. In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the Corporate Debtor;

iv. The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and moral;

v. The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1)(b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;

vi. It is hereby directed that the Corporate Debtor, its Directors, personnel, and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;

vii. The Suspended Board Of Directors is directed to give complete access to the Books of Accounts of the corporate debtor maintained under Section 128 of the Companies Act. In case the books are maintained in the electronic mode, the Suspended Board of Directors is to share with the Resolution Professional all the information regarding Maintaining the Backup and regarding Service Provider kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively, as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the Service Provider and its location, and also the address of the location of the Books of Accounts maintained in the cloud. In case accounting software for maintaining the books of accounts is used by the corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate Affairs. The The statutory auditor is directed to share with the Resolution Professional the audit documentation and the audit trails, which they are mandated to retain pursuant to SA-230 (Audit Documentation) prescribed by the Auditing and Assurance Standards Board ICAI. The IRP/Resolution Professional is directed to take possession of the Books of Account in physical form or the computer systems storing the electronic records at the earliest. In case of any non-cooperation by the Suspended Board of Directors or the statutory auditors, he may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing this order. For retrieval of relevant information from the systems of the corporate debtor, the IRP/RP may take the assistance of Digital Forensic Experts empaneled with this Bench for this purpose. The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government portals, for various compliances. The Interim Resolution Professional is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.

viii. The Resolution Professional is directed to approach the Government Departments, Banks, Corporate Bodies, and other entities with the request for information/documents available with those authorities/institutions/others pertaining to the corporate debtor which would be relevant in the CIR proceedings. The Government Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the

Resolution Professional to enable him to conduct the CIR Proceedings as per law.

ix. The Interim Resolution Professional shall, after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying the constitution of the Committee, to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene the first meeting of the Committee within seven days of filing the report of the constitution of the Committee; and

x. The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every fortnight.

11. We declare the moratorium in terms of sub-section (1) of Section 14 of the Code, as under:-

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 Securitization and Reconstruction of Operational 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.

12. It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, if any, shall not be terminated or suspended or interrupted during the moratorium period. The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.

13. The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33 as the case may be.

14. The petitioner is directed to deposit an amount of ₹1,00,000/- (Rupees One Lakh Only) with the Interim Resolution Professional to meet the immediate expenses of the CIRP within two weeks. The same shall be fully accountable by Interim Resolution Professional and shall be reimbursed by the Committee of Creditors (CoC) to the petitioner to be recovered as the CIRP cost.

15. A copy of this order be communicated to both parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his email address forthwith.

16. This petition is accordingly admitted.

Sd/-	Sd/-
(D. Arvind)	**(Harnam Singh Thakur)**
Member (Technical)	**Member (Judicial)**
September 09, 2024	
ASG	