



IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER

PRASANTA KUMAR MOHANTY,
HON'BLE TECHNICAL MEMBER

CP No. (IB)- 97/9/JPR/2021

(Under Section 9 of the Insolvency and Bankruptcy Code, 2016, Read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

IN THE MATTER OF:

VARUN KUMAR PROP. OF M/S V.K. FOODS

...Operational Creditor

Versus

M/S SHREEOM PRIME FOODS PRIVATE LIMITED.

...Corporate Debtor

MEMO OF PARTIES

Varun Kumar

Prop. of M/s V.K. Foods

Gautam Industrial Area, 20 KM
Mile Stone, Pugal Road, Shobhasar,
Bikaner, Rajasthan- 334001

...Applicant / Operational Creditor

VERSUS

M/s Shreeom Prime Foods Pvt. Ltd.

F-243 Industrial Growth Center,
Khara Bikaner, Rajasthan- 334601

...Respondent / Corporate Debtor



For the Applicant : Prateek Kedawat, Adv.
For the Respondent : Mohit Golyan, FCA

Order Pronounced On: 28.07.2022

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. This Application has been filed by Mr. Varun Kumar, Proprietor of M/s. V.K. Foods ('Operational Creditor / Applicant') under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('Code / IBC') read with Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 ('Rules, 2016'), with a prayer for initiation of Corporate Insolvency Resolution Process ('CIRP') against M/s. Shreeom Prime Foods Pvt. Ltd. ('Corporate Debtor / Respondent').
2. The Applicant has its Registered Office at Gautam Industrial Area, 20 KM Mile Stone, Pugal Road, Shobhasar, Bikaner, Rajasthan – 334001. Application has been filed in Form-5 as prescribed in Rules, 2016 for the alleged default on the part of Respondent for non-payment of operational dues amounting to Rs. 1,12,09,157/-.
3. The Respondent, M/s Shreeom Prime Foods Pvt. Ltd., is a private limited company incorporated under the Companies Act, 1956 on 09.01.2013, duly registered with Registrar of Companies, Jaipur, bearing CIN: U15139RJ2013PTC041247. The registered office of the Respondent is at F-



243, Industrial Growth Centre, Khara, Bikaner, Rajasthan – 334601. The Company's authorised share capital is Rs. 3,00,00,000/- (Rs. Three Crore Only) and paid-up share capital of Rs. 2,25,00,000/- (Rs. Two Crore Twenty-Five Lakhs Only). The registered office of the Corporate Debtor is in District Bikaner, Rajasthan. This Adjudicating Authority has jurisdiction to decide the instant Application of the Operational Creditor.

4. The Applicant sold food articles like wheat, maize, barley, *etc.*, to the Corporate Debtor through a total of 18 invoices from 16.08.2021 to 09.09.2021, whereby a principal amount of Rs. 1,12,09,157/- is due for the goods that were sent to the aforementioned Corporate Debtor's registered office. The copy of the sale invoices raised on the Corporate Debtor is annexed in Annexure-C (Colly) of the Application.
5. As the Corporate Debtor did not pay the amount, the Applicant issued a demand notice dated 22.11.2021 under Section 8 of the Code to pay the principal amount. The total outstanding amount which is enumerated in Part IV of the Form-5 filed with the Application:

PART IV

Particulars of Operational Debt	
The total amount of debt, details of transactions on account of which debt fell due, and the date from which such debt fell due	<u>Amount of Debt Due: 1,12,09,157/-</u> Total Outstanding Principal Amount: Rs. 1,12,09,157/-



Amount claimed to be in default and the date on which the default occurred	The total amount to be in the default is Rs. 1,12,09,157/- The date of default is 09.09.2021
--	---

6. The Applicant submits that the sales of goods were made to the Corporate Debtor as per the Corporate Debtor's instructions and following the prescribed law. Further, it was argued that the payment has to be made immediately on raising the invoice; however, because of the long-standing business relationship between the parties, there was an implied understanding regarding the payment of dues. The aforesaid demand notice was served on 26.11.2021 through the post of the address of the Corporate Debtor. Postal receipt along with postal tracking slip are annexed at Annexure-E (Colly) of the Application.
7. Applicant further submits he had not received any complaint concerning the quality and quantity of goods sold to Corporate Debtor. Additionally, no proceedings are pending before the court of law regarding the supply of goods. Moreover, the Applicant has attached the Bank Statement for the period of 01.08.2021 to 03.12.2021, showing that the Corporate Debtor has tendered no payment. Copy of the Bank Statement is annexed at Annexure – 4 (Colly) of the Application.
8. Notices were issued in the aforesaid Application. The Corporate Debtor filed its reply *vide* Diary No. 437/2022 dated 16.02.2022, acknowledging the debt. It is stated that it is not wilfully defaulting the payment and intend to repay



the said amount, and the same is evident from its commitment to making payment by confirming the outstanding dues *via* its Ledger Account (01.04.2021 to 10.11.2021) forwarded by the Operational Creditor. Given the global pandemic, the growth of the business has been hampered a lot, and it is passing through a significant financial crisis. It also stated that it does not want to shy away from its obligation and will pay the entire amount; however, it requires an extension of time.

9. It has been shown that the Corporate Debtor has failed to make payment of the aforesaid amount due till date as mentioned in statutory notice. It is also observed that the condition under Section 9 of the Code stands satisfied. Hence, this Adjudicating Authority is inclined to commence CIRP against the Corporate Debtor as envisaged under IBC, 2016.

10. Under sub-section (4) of Section 9 of the Code, the Operational Creditor proposed Ms. Parul Goyal's name to be appointed Interim Resolution Professional ('IRP'), bearing Registration No. IBBI/IPA-001/IP-P-02541/2021-22/13900 with the e-mail address parul.aquaris@gmail.com resident of B-5/24, Sector 4, Rohini, Near Vishram Chowk, Opposite Mother Divine Public School, New Delhi- 110085 in the present matter. The said IRP has filed the written consent to act as a resolution professional in Form-2 provided under Rule 9 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016. The credentials of the proposed IRP have been checked from the IBBI website, and nothing adverse



is found on record.

11. In this matter, the Interim Resolution Professional appointed herein, Ms. Parul Goyal, shall exercise all the powers enumerated under the Code read with Rules made thereunder. The Applicant shall provide a copy of the Application, if not provided already, along with this order to IBBI for its records.

12. The IRP is directed to take all such steps as are required under the statute, inter-alia in terms of Sections 15, 17, 18, 19, 20, and 21 of the Code, and transact proceedings with utmost dedication, honesty and strictly under the provisions of the Code, and Rules and Regulations thereunder.

13. Consequences of commencement of CIRP shall be inter-alia as follows:

- i. The IRP appointed by the Adjudicating Authority, Ms. Parul Goyal, is directed to take over the affairs of the Corporate Debtor and duties as required to be performed by her under the provisions of the Code, including the issue of a publication in widely circulated Newspapers as contemplated under the provisions of the Code, calling for claims from the creditors of the Corporate Debtor and collation of the same shall be done.
- ii. Further, as a sequel of admission, a moratorium, as envisaged under Section 14 of the Code, is invoked concerning the Corporate Debtor, which will be in vogue during the CIRP of the Corporate Debtor. The IRP shall carry out CIRP strictly as per the timelines specified and as envisaged under the provisions of the Code concerning the



Corporate Debtor.

- iii. The said IRP shall act strictly following the provisions of the Code, and to defray her expenses to be incurred and fees on the account, the Applicant is directed to deposit a sum of Rs. 1,00,000/- (One Lakh Only) to the bank account of IRP within two weeks from the date of this order. This amount shall be proportionately contributed and reimbursed to the Applicant upon forming a Committee of Creditors. The IRP shall duly file a status report apprising this Adjudicating Authority about the progress of CIRP concerning the Corporate Debtor. In terms of Section 17 and 19 of the Code, all personnel of the Corporate Debtor, including promoters and Board of Directors, whose powers shall stand suspended, shall extend all cooperation to the IRP during her tenure as such and the management of the affairs of the Corporate Debtor shall vest with the IRP.
- iv. In terms of Section 9 of the Code, this order shall be communicated at the earliest, not exceeding one week from today, to the Applicant, Corporate Debtor, as well as the IRP appointed by this Adjudicating Authority to carry out CIRP. A copy of this order shall also be communicated to IBBI for its records.

14. Copy of this order is to be supplied to the parties. The Applicant and his counsel are directed to serve a copy of this order along with a copy of the Application and documents on the Interim Resolution Professional by all



modes for information.

15.The Registry is directed immediately to send a soft copy of the instant Application along with this order to the IRP nominated on her e-mail id.

Accordingly, CP No. (IB)- 97/9/JPR/2021 is admitted.

IA No. 240/JPR/2022

This Interim Application had been filed by the Operational Creditor seeking early listing of the C.P.(IB) No. 97/9/JPR/2021. In the light of the foregoing order, this IA stands disposed of as infructuous.

DEEP
CHANDRA
JOSHI

Digitally signed by
DEEP CHANDRA JOSHI
Date: 2022.07.28
17:11:26 +05'30'

**DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**

PRASANTA
KUMAR
MOHANTY

Digitally signed by
PRASANTA KUMAR
MOHANTY
Date: 2022.07.29
17:36:58 +05'30'

**PRASANTA KUMAR MOHANTY,
TECHNICAL MEMBER**