IN THE NATIONAL COMPANY LAW TRIBUNAL, SPECIAL BENCH, CHENNAI

IBA/386/2020

(Filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

In the matter of ***M/s. Capricorn Food Products India Limited***

M/s. RASAA FOODS PRIVATE LIMITED,
Reg. Office at New No.321,
Linghi Chetty Street, Chennai – 600 001.

... *Operational Creditor*

-Vs-

M/s. CAPRICORN FOOD PRODUCTS INDIA LIMITED,
Reg. Office at Old No. AH-216,
New No. AH-11, 2nd Street, Shanthi Colony,
Anna Nagar, Chennai – 600 040.

... *Corporate Debtor*

Order pronounced on 13th November, 2020

CORAM :

R. SUCHARITHA, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)

For Operational Creditor : *Ravi Rajagopalan, Advocate*
For Corporate Debtor : *S. Sathiyanarayanan, Advocate*

ORDER

Per: **R. SUCHARITHA, MEMBER (JUDICIAL)**

1. Under consideration is an Application filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as "I&B Code, 2016") by one **M/s. Rasaa Foods Private Limited** (hereinafter referred to as "**Operational Creditor**") against

M/s. Capricorn Food Products India Limited (hereinafter referred to as "**Corporate Debtor**").

2. From Part-I of the Application, it is evident that the Operational Creditor is a Private Limited Company. From Part-II of the Application, it is evident that the Corporate Debtor is a Limited Company which was incorporated on 08.10.1998 with the nominal Share Capital of Rs.40,00,00,000/- and Paid-up Share Capital of Rs.29,72,00,000/-.

3. From Part-III of the Application, it is seen that the Operational Creditor has proposed one **Ms. J.Karthiga** (Reg. No. IBBI/IPA-001/IP-P00752/2017-2018/11284) as the Interim Resolution Professional (IRP) and the written communication of the said IRP obtained in Form-2 is placed at page No.117 of the typed set filed along with the Application. Part-IV of the Application discloses the total amount of debt from which it is evident that the Operational Creditor has claimed a sum of Rs.1,59,70,597/- as against the Corporate Debtor.

4. It is submitted by the Ld. Counsel for the Operational Creditor that the Operational Creditor is in the business of Manufacturing variety of Fruit products and during the course of its business the

Corporate Debtor has placed several Purchase Orders on the Operational Creditor for the purchase of Totapuri Mango Pulp, filled in Aseptic bags. It is also submitted that as against the Purchase Order, the Operational Creditor has raised various invoices aggregating to a sum of Rs.7,49,13,406/- on the Corporate Debtor. It is stated in the Application that the Corporate Debtor had accepted the invoices and received the said goods from the Operational Creditor without any dispute or demur.

5. It is further submitted by the Ld. Counsel for the Operational Creditor that out of the above sum of Rs.7,49,13,406/-, the Corporate Debtor had paid a sum of Rs.5,89,42,809/- to the Operational Creditor and as such a sum of Rs.1,59,70,597/- is due and payable by the Corporate Debtor to the Operational Creditor. It is submitted that the Corporate Debtor has repeatedly assured the Operational Creditor that it would clear the balance dues, however, the Corporate Debtor has failed to clear the outstanding dues and as such the Operational Creditor was constrained to issue a Demand Notice under Section 8 of the I&B Code, 2016 in Form-3 on 19.03.2020 for the unpaid operational debt of Rs.1,59,70,597/-.

6. It is submitted by the Ld. Counsel for the Operational Creditor that the Corporate Debtor had received the said Demand Notice on

20.03.2020, however, the Corporate Debtor has neither paid the unpaid operational debt nor has given any notice relating to the dispute of the unpaid operational debt to the Operational Creditor. In this regard, the Operational Creditor has also filed an Affidavit under Section 9(3)(b) of I&B Code, 2016 and the same is placed at page Nos.111 to 113 of the typed set filed along with the Application. Under these circumstances, Ld. Counsel for the Operational Creditor submitted that the debt and default on the part of the Corporate Debtor is proved and as such prayed for initiation of the Corporate Insolvency Resolution Process (CIRP) as against the Corporate Debtor.

7. The Corporate Debtor has filed the Reply to the Application filed by the Operational Creditor and as such it was submitted by the Ld. Counsel for the Corporate Debtor that the Corporate Debtor is world's fourth largest supplier of Mango Pulps and Concentrates with an overall market share of 7% (Approx) and India's second largest manufacturer with 16% (Approx) volume share. It was also submitted that the Corporate Debtor enjoys credit facilities from various Banks and has never defaulted any interest and principal repayment.

8. It was also submitted by the Ld. Counsel for the Corporate Debtor that the Corporate Debtor's turnover during the Financial Years 2017-2018 was Rs.467 crores, during 2018-2019 was Rs.320 crores and that during 2019-2020 was Rs.322 crores. However, it was submitted that the above situation on the financials of the Company has changed in the recent past due to various external factors and COVID-19 pandemic also has affected the business of the Corporate Debtor very badly. Further, it was submitted that the Corporate Debtor has various debt exposure to the tune of Rs.177.64 Crores against the consortium of bankers. It was submitted that the Banks have also initiated recovery action and as such the Company is unable to service its debt obligations as well.

9. Ld. Counsel for the Corporate Debtor has placed on record that the Company has lost its stock of perishable goods worth about Rs.56 Crores due to fermentation and that it is unable to ascertain the quality status of the stock that it holds for a value of Rs.160 crores. Under these circumstances, Ld. Counsel for the Corporate Debtor submitted that due to the above difficulties faced by the Corporate Debtor, they are unable to pay the dues to the Operational Creditor and as such, if the Operational Creditor is being paid, the

Corporate Debtor may face the same issue with other Operational Creditor as well.

10. Heard both sides and perused the records and pleadings before this Tribunal.

11. From the averments made by the Operational Creditor in the Application and also from the Reply filed by the Corporate Debtor, it is evident that there is an existence of 'operational debt' and as such the Corporate Debtor has defaulted in paying such operational debt to the Operational Creditor. Further, from the list of invoices filed, it is evident that all those invoices are well within the period of limitation. From the facts and documents filed by both the parties and also based on the oral submissions made by both the counsels, it is clear that there is no 'pre-existing dispute' between the parties.

12. It is also seen that the present Application has been filed before this Tribunal on 28.07.2020 and as such the Notification issued by the Central Government in this regard by increasing threshold limit from Rs.1 Lakh to Rs.1 crore would not apply to the facts and circumstances of the present case, as the amount claimed to be in default is already more than Rs.1 Crore.

13. It is also noted that the Central government by way of an amendment inserted in Section 10A of I&B Code, 2016 wherein the default in respect of the dues arising from the period 25.03.2020 till 25.09.2020, *(now extended upto 25.12.2020)* has been excluded and as such in the present case from Part-IV of the Application it is seen that the default has occurred much prior to 25.03.2020 and hence Section 10A of I&B Code, 2016 also would not come to the aid of the Corporate Debtor.

14. Thus taking into consideration the facts and circumstances of the case as well as the position of Law and also in view of the inability of the Corporate Debtor to repay its debt to the creditors, and also in view of the fact that debt and default on the part of the Corporate Debtor is being proved by the Operational Creditor, this Tribunal is constrained to initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor.

15. Since the Operational Creditor has named the IRP in Part III of the Application, this Tribunal hereby appoints **Ms. J.Karthiga** Registration No. **IBBI/IPA-001/IP-P00752/2017-2018/11284** as the "Interim Resolution Professional" of the Corporate Debtor. As a consequence of the Application being admitted in terms of Section

9 (5) of the Code, the moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:

a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent 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 respondent in respect of its property including any action under the Securitization 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 respondent.

16. However, during the pendency of the moratorium period in terms of Section 14(2) (2A) and 14(3) as extracted hereunder:

(2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be

terminated or suspended or interrupted during moratorium period.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or serices critical to protect and preserve the value of the Corporate Debtor and mange the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

17. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:

(4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.

18. Based on the above terms, 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 the Order shall be communicated to the Operational Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named be also furnished with copy of this Order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

-sd-
(ANIL KUMAR B)
MEMBER (TECHNICAL)

-sd-
(R. SUCHARITHA)
MEMBER (JUDICIAL)

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