

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT – II)

Item No. 202
CP(IB)-549/ND/2024

IN THE MATTER OF:

Kaveri Sales Corporation

Office No. 201 Usha Kiran,
Plot No. A-4/1, Naniwala Bagh,
Commercial Complex
New Delhi- 110033

... Applicant/Operational Creditor

Versus

Surya Milk Products Pvt. Ltd.

1/210, G/F Shop, Subhash Nagar,
New Delhi- 110027

... Respondent/Corporate Debtor

Under Section: 9 of IBC, 2016

Order delivered on 06.01.2025

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)

SH. SUBRATA KUMAR DASH, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Adv. Vaibhav Tyagi

For the Respondent : Adv. Udit Singh

Hearing Through: VC and Physical (Hybrid) Mode

ORAL ORDER

The present petition has been preferred under Section 9 of IBC, 2016.

The details of amount of debt and date of default are given in Part IV of the application which reads thus:-

1.	TOTAL AMOUNT OF DEBT, DETAILS OF TRANSACTIONS ON ACCOUNT OF WHICH DEBT FELL DUE AND THE DATE FROM WHICH SUCH DEBT FELL DUE	INR 1,00,32,980 (Rupees One Crore, Thirty Two Thousand, Nine Hundred and Eighty only) for the default committed on 18.04.2023, 23.04.2023 and 26.04.2023 Date of default- 18.04.2023, 23.04.2023 and 26.04.2023
----	---	--

		<p>Kaveri Sales Corporation (Operational Creditor) and M/s Surya Milk Products Pvt. Ltd. (Corporate Debtor) entered into a business arrangement, wherein the Operational Creditor supplied dairy product "cream" to the Corporate Debtor on three occasions- 18.04.2023, 23.04.2023 and 26.04.2023 for INR 33,43,550/-, INR 30,87,250/- and INR 36,02,180/- respectively. The Operational Creditor supplied the products as required and performed all its obligations under the said business arrangement and accordingly, raised invoices against the said supplies. Out of the total invoices raised till date, a sum of INR 1,00,32,980/- is outstanding as on respective dates of invoices being 18.04.2023, 23.04.2023 and 26.04.2023. However, despite numerous requests and reminders from the Operational Creditor, the Corporate Debtor has failed to make payments of the outstanding amount towards the above invoices. Constrained by the non-payment of dues by the Corporate Debtor, the Operational Creditor sent Demand Notice in Form-3 dated 25.01.2024 under Section 8 of the Code to the Corporate Debtor. It is submitted that in its reply dated 09.02.2024, the Corporate Debtor has not denied the default and neither raised any pre-existing dispute with respect to the said default.</p>
2.	<p>AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DATES OF DEFAULT IN TABULAR FORM)</p>	<p>INR 1,00,32,980 (Rupees One Crore, Thirty-Two Thousand, Nine Hundred and Eighty only)</p> <p>Occurrence of default: 18.04.2023, 23.04.2023 and 26.04.2023</p> <p>Copy of the Invoices dated 18.04.2023, 23.04.2023 and 26.04.2023 are annexed herewith and marked as ANNEXURE A-6.</p> <p>Workings for computation of default of operational debt is enclosed as ANNEXURE A-7.</p>

2. The invoices raising the demand are enclosed as Annexure A-6 to the petition. Ld. Counsel for the Applicant could draw our attention to balance sheet of Corporate Debtor to espouse that the Corporate Debtor has acknowledged liability to pay the amount of debt defaulted to be paid, as referred to in Part IV of the application. The copy of balance sheet is not placed on record either virtually or physically, however the Ld. Counsel for the Corporate Debtor has accepted the liability and has not disputed the balance sheet. The relevant excerpt of the balance sheet reads thus:-

SURYA MILK PRODUCTS PRIVATE LIMITED 1/210, G/F Shop, Shubhash Nagar New Delhi New Delhi DL 110027 IN CIN: U15202DL2014PTC266642 Balance Sheet as at 31st March, 2024			
Particulars	Note No.	As at 31st March, 2024	As at 31st March, 2023
I. EQUITY AND LIABILITIES			
(1) Shareholders' Funds			
(a) Share Capital	1	172.00	172.00
(b) Share Application Money Pending For Allotment			
(c) Reserves and Surplus	2	2.93	6.38
		174.93	178.38
(2) Long Term Borrowings			
(a) Unsecured Loans			
(3) Current Liabilities			
(a) Trade Payables	3	10,032.98	1.00
(b) Other Current Liabilities	4	23.80	5.00
		10,056.78	6.00
Total		10,231.71	183.38
II. ASSETS			
(1) Non Current Assets			
(a) Fixed Assets			
(2) Investment			
I) Current Assets			
(a) Trade Receivables	5	10,048.33	183.38
(b) Cash and Cash Equivalents	6	183.38	183.38
		10,231.71	183.38
Total		10,231.71	183.38

Significant Accounting Policies and Other Notes to Accounts
This is the Balance Sheet referred to in our report of even date

Sushil Upadhyay & Associates
Chartered Accountants
Firm Regn. No. 18851C
M. No. 511930
Sushil Upadhyay
Proprietor
Membership No. 511930

For and on Behalf of the Board of Directors of
Surya Milk Products Private Limited

Surya Kant Bhola
Director
DIN: 06604281

Simran Bhola
Director
DIN: 06604289

Place: Delhi
Date: 21-09-2024
UDIN: 24511930BKAKXZ3693

3. Precipitated collusion between the parties, in terms of the order dated 25.11.2024, we direct the Petitioner as well as Corporate Debtor to file their independent affidavit indicating therein that petition is not collusive. The Affidavit filed by the Petitioner is found on record and Clause 2 to 6 of the affidavit reads thus:-

- “2. That the present affidavit is filed in compliance of the order dated 25.11.2024 passed by this Hon’ble Tribunal, wherein this Hon’ble Tribunal directed the Operational Creditor to file an independent affidavit stating the present petition filed under Section 9 of the Code is non-collusive in nature. Copy of the order dated 25.11.2024 is annexed herewith and marked as **ANNEXURE A**.
3. That in due compliance of the order dated 25.11.2024, the Operational Creditor herein declare that the present petition bearing CP(IB) No. 594 of 2024 filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter, “Code”) is non-collusive in nature.
4. That the Operational Creditor further declares that the Operational Creditor has not entered into any collusive arrangement or agreement with the Corporate Debtor/ Respondent i.e. Surya Milk Products Private Limited to initiate the present proceedings.
5. That the instant Affidavit is filed in compliance of the order dated 25.11.2024 passed by this Hon’ble Adjudicating Authority.
6. I respectfully submit that the present petition, bearing CP(IB) No. 594 of 2024 filed under Section 9 of the Code, is bona fide and has been initiated in good faith.”

4. The Corporate Debtor as also filed an independent affidavit stating therein that the captioned petition is not collusive. The relevant excerpt of affidavit reads thus:-

“2. That vide order dated 25.11.2024, this Hon'ble Tribunal was pleased to direct the Corporate Debtor/Respondent herein to file an independent affidavit stating that the present petition is not collusive in nature. Further, this Hon'ble Adjudicating Authority was also pleased to direct the respondent to disclose the details of all the liabilities of the Corporate Debtor and that the affidavit shall also be accompanied by an audited balance sheet of the Corporate Debtor.

3. That in due compliance of the order dated 25.11.2024, the Respondent herein declare that the present petition bearing CP(IB) No. 594 of 2024 filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter, "Code") is non-collusive in nature.

4. That the Corporate Debtor has not entered into any collusive arrangement or agreement with the Applicant, Kaveri Sales Corporation, or any third party to initiate or advance this proceeding.”

5. Along with the affidavit, the Corporate Debtor has also acknowledged his balance sheet and acknowledging the liability to pay the defaulted amount of debt to the Operational Creditors. The demand notice served by the Operational Creditor upon Corporate Debtor has been enclosed as Annexure A-12 to the petition. The reply to demand notice is available on record as Annexure A-13.

6. As can be seen from reply to demand notice, the Corporate Debtor has not disputed the liability to pay the defaulted amount and has taken the stand that it is in the process of obtaining funds from its customers to raise the payment. The text of reply to demand notice reads thus:-

SUBJECT: REPLY TO DEMAND NOTICE DATED 25.01.2024 FOR AN OUTSTANDING AMOUNT OF INR 1,00,32,980/-.

Dear Sir,

The undersigned is an Authorised Representative of Surya Milk Products Pvt. Ltd. duly authorized vide its Board Resolution. I am writing this in response to your Demand Notice dated 25.01.2024 for an outstanding amount of INR 1,00,32,980/- as due and payable to you.

At the outset, the undersigned wishes to reserve its right to raise disputes with respect to the quality and quantity of the goods supplied by you, against the outstanding invoices. Furthermore, it is for your knowledge that we are in the process of obtaining funds from our customers and due to some delay on part of our customers in making the payment, the company has been unable to make the payment of debt due and payable to you (which is subject to calculations). Therefore, we seek an additional time period from you to make the payment of outstanding dues.

Kind Regards

For Surya Milk Products Pvt. Ltd

7. The Petitioner has also filed an affidavit in terms of the provisions of Section 9(3)(b) of IBC, 2016. The relevant excerpt of the affidavit reads thus:-

1. That I am the Partner of Kaveri Sales Corporation (Applicant/Operational Creditor) and well aware of the facts of the instant case, and thus, competent to swear this Affidavit.
2. That the captioned Application has been filed by the Operational Creditor against Surya Milk Products Pvt. Ltd. (Corporate Debtor), thereby seeking initiation of Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor, under Section 9 of the Insolvency and Bankruptcy Code, 2016.
3. That in terms of Section 9(3)(b) of the Code, I state that the Operational Creditor has not received any notice of dispute with respect to the unpaid operational debt, from the Corporate Debtor, prior to the issuance of Demand Notice under Section 8 of the Code.
4. That the instant Affidavit is bona fide and in the interest of justice.

8. The consent of RP is placed on record as Annexure A-4 to the petition. The RP has declared that no disciplinary proceedings pending against him. The relevant excerpt of Form 2 placed on record by the Petitioner reads thus:-

“(iv) Certify that there are no disciplinary proceedings pending against me with the Board or Institute of Insolvency Professionals of Institute of Cost Accountants”

9. As can be seen from the provisions of Section 9(5) of IBC, 2016, the Adjudicating Authority shall within 14 days of the receipt of the application under sub-section (2) of Section 9 of the Code shall admit the application if;-

- a. The application made under sub-section (2) is complete;
- b. There is no payment of unpaid of operational debt;
- c. The invoice or notice for payment to corporate debtor has been delivered by the operational creditor;
- d. No notice of dispute has been received by the operational creditor or no dispute in the information utility; and
- e. There is no disciplinary proceedings pending against any resolution professional proposed under sub-section (4), if any.

10. The Ld. Counsel for the Corporate Debtor categorically submitted that the amount of debt has not yet been repaid. Even in reply to the demand notice also the Corporate Debtor did not dispute the liability to repay the amount of debt. Only arguments raised on behalf of the Corporate Debtor is that the demand notice issue was not on prescribed form i.e. Form 4 and was in Form 3. In her submission, the difference between the two forms is when Form 3 need to be served independently enclosing therewith the invoices raised, the Form 4 is utilised to serve demand notice along with no invoices.

11. We are of the view that even when Form 3 utilised by the Creditor to serve demand notice is accompanied by invoices, there can be no infirmity in the process, as the object and purpose of demand notice is that the Corporate Debtor should know that the Creditor has demanded the amount of default and it is

liable to repay the same, failing which it may face the consequences in terms of the provisions of Section 9 of IBC, 2016. The two forms prescribed are only for the sake of convenience. The intent of legislation to prescribed Form 4 may be with the object that it can be easily deciphered that whether the Creditor has raised invoices or not. In any case, in the present case the Corporate Debtor has accepted the liability and it has also been stated by Ld. Counsel for the Corporate Debtor at the Bar that the amount of debt has not been repaid. In the wake the aforementioned, technical plea is of no consequence.

12. Also, in **Company Petition No. IB-219(ND)/2021**, a coordinate Bench could rule that the issuance of demand notice in Form 3, even in a situation where invoices could be issued would not vitiate the demand notice. Para 5 of the order reads thus:-

“5. That vide order dated 02.07.2021, this Bench has held the following in respect of the aforesaid issue:

“29. Accordingly, we hold that in a situation where an Operational Debt arises out of the provision of goods and services and pursuant to that Invoices are raised, there is no illegality in choosing the Form 3 as provided in Rule 5(1)(a) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for sending the Demand Notice provided that the Unpaid Invoices forming part of the transaction are annexed therewith. Hence, issuance of Demand Notice in Form 3 annexed with invoices by the Operational Creditor in the present case would be in order in terms of the Rules.”

13. In view of the aforementioned, we are satisfied that the requirement of Section 9(5)(1) of IBC, 2016. In the wake, **we have left no option but to admit the main petition. Ordered accordingly.**

14. In view of the aforementioned, **we are left with no option but to admit the present application. Order accordingly. In the wake, moratorium provided under Section 14 of IBC, 2016 is declared qua the CD** and as a necessary consequence thereof the following prohibitions are imposed, which must be followed by all and sundry:

- (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.

15. As proposed by the Petitioner Mr. Shamsheer Bahadur Singh, having Registration IBBI/IPA-003/0341/2021-2022/13623 is appointed as IRP, subject to the condition that no disciplinary proceeding is pending against him and disclosures as required under IBBI Regulations, 2016 are made by him within a period of one week from this Order. It is further ordered that Mr. Shamsheer Bahadur Singh shall take charge of the CIRP of the Corporate Debtor with immediate effect and would take steps as mandated under the IBC

specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016 read with extend provisions of IBBI (Insolvency Resolution of Corporate Persons) Regulations, 2016.

16. The Petitioner is directed to deposit Rs. 2,00,000/- only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

17. A copy of this Order shall immediately be communicated by the Registry/Court Officer of this Tribunal to the Petitioner /Financial Creditor, the Respondent/Corporate Debtor and the IRP mentioned above.

18. In addition, a copy of this Order shall also be forwarded by the Registry/Court Officer of this Tribunal to the IBBI for their records.

Sd/-
(SUBRATA KUMAR DASH)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)

Deep Chand/Ruchita