IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-I

CP (IB) 1529/MB/2019

Under Section 9 of the Insolvency and Bankruptcy Code, 2016

Sun International Flower Co. Limited.
[CIN: U01132MH2013PTC251189]
188, Prannok-Phutthamonthon Sai 4 Road,
Bangprom, Talingchan, Bangkok

…Operational Creditor/Petitioner

Versus

Fresh Connections Private Limited
[CIN: U01132MH2013PTC251189]
Reg. Office- 11/D, Shivsagar, Shivaji Park, Road No. 5
Mumbai - 400016

…Corporate Debtor/Respondent

Order Delivered on: 11.11.2022

Coram:
Hon'ble Member (Judicial) : Justice P.N. Deshmukh (Retd.)

Hon'ble Member (Technical): Sh. Shyam Babu Gautam

Appearances:

For the Operational Creditor : : Mr. Nihal Shaikh, Advocate

For the Corporate Debtor : None Present.

ORDER

Per: Shyam Babu Gautam, Member (Technical)

1. This Company Petition is filed under Section 9 ("**the Petition"**) of the Insolvency and Bankruptcy Code, 2016 **(IBC)** by **Sun International Flower Co. Limited ("the Operational Creditor")**, seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Fresh Connections Pvt. Ltd. ("the Corporate Debtor")**.

2. The Corporate Debtor was incorporated on 19.12.2013 under the Companies Act, 2013. The registered address of the Corporate Debtor is Reg. Office- 11/D, Shivsagar, Shivaji Park, Road No. 5 Mumbai – 400016 and its Corporate Identity Number (CIN) is **U01132MH2013PTC251189.**Therefore, this Bench has jurisdiction to deal with this petition.

Brief Facts of the case:

3. The present petition was filed on 26.03.2019 on the ground that the Corporate Debtor failed to make payment of a sum of USD 32,742.50 (United State Dollars Thirty-Two Thousand Seven Hundred Forty-Two and Decimal Fifty Cents only) as principal amount and interest of USD 4,890.83 (United Dollars Four Thousand Eight Hundred Ninety and Decimal Eighty-Three Cents only) calculated @ 6.5% per annum on the outstanding amount till payment and/or realisation.

4. The Petitioner vide its affidavit dated 29.08.2022 submits that the amount in Indian Currency is Rs.25,90,938/- (Rupees Twenty-Five Lakh Ninety Thousand Nine Hundred and Thirty-Eight only) including principal claim

of Rs.22,54,219/- plus interest of Rs.3,36,718/- till the date of filing of the Petition. The Petitioner has taken the USD exchange rate of 68.84 prevailing on the date of filing the Company Petition i.e. 26.03.2019 for the purpose of conversion of amounts from USD to INR.

5. The date of default stated to be in Part -IV of the Petition is 24.12.2016. The invoices provide for computation of interest @ 6.5 % p.a. after the due date.

6. The Operational Creditor was contacted by the Corporate Debtor for purchase of "Fresh Orchid Cut Flowers" ("**goods"**). The Corporate Debtor and the Operational Creditor reached upon an Agreement for supply of goods from Bangkok, Thailand to Mumbai, India.

7. The goods were delivered by way of Nine shipments. Copies of Airway Bills are annexed to Petition as **Exh – 'D' to Exh-'L"** and Invoices are annexed to Petition as **Exh – 'M' to Exh-'U"** respectively. The details of amount claimed to be in default and date on which the default occurred are as follows :

Sr. No.	Due date under the Invoice	Balance outstanding Amount in USD (A)	Interest @ 6.5% p.a. from the due date of Invoice till 26.12.2019 amount in USD (B)
1.	Invoice No.IV2016014SH dated 24.11.2016	3,920	594.77
2.	Invoice No.IV2016015SH dated 26.11.2016	2,723	412.18
3.	Invoice No.IV2016016SH dated 30.11.2016	3,360	506.21

4.	Invoice No.IV2016017SH dated 02.12.2016	2,443	367.19
5.	Invoice No.IV2016018SH dated 02.12.2016	6,037	906.29
6.	Invoice No.IV2016019SH dated 24.11.2016	4,291	639.59
7.	Invoice No.IV2016020SH dated 15.12.2016	3,080	455.80
8.	Invoice No.IV2016021SH dated 22.12.2016	3,248	476.61
9.	Invoice No.IV2016022SH dated 25.12.2016	3,640	532.19
	Total	32,742.50	
	Interest @ 6.5% p.a. from the due date of Invoice till 17.12.2018		4,890.83
	Total Outstanding (A+B)	**37,633.33**	

8. The Operational Creditor states that the Corporate Debtor received the said goods shipped under the abovementioned 9 shipments under perfect condition and in accordance with the specifications and requirements of the Corporate Debtor. Till date the Corporate Debtor has not raised any dispute regarding the quality or quantity of the goods as such, it has accepted the said goods.

9. The Operational Creditor states that the payment due and payable under the abovementioned invoices were not made on the respective maturity dates, hence the fact was immediately brought to the notice of Corporate Debtor but of no avail.

10. Consequent to further discussion for discount in rates, the parties entered into Settlement Agreement dated 30.05.2017. As per the said Settlement Agreement, it was agreed between the parties that Corporate Debtor will pay an amount of Rs.16,90,000/- (Rupees Sixteen lakhs Ninety thousand

only) to the Operational Creditor for all the goods supplied under the abovementioned shipment in three instalments. Settlement Agreement dated 30.05.2017 is annexed to the Petition as (**Exh-V pgs. 72-74**)

11. The Operational Creditor has issued Demand Notice in Form – 3 dated 17.12.2018 under Section 8 of the Insolvency and Bankruptcy Code, 2016 is annexed to the Petition as **Exh-'X'.** The Corporate Debtor sent reply dated 29.01.2019 to the Demand Notice dated 17.12.2018. By the said reply, the Corporate Debtor denied the liability to pay the outstanding amount and further alleged that the said goods were supplied by the Operational Creditor to the third party and the Corporate Debtor had only undertaken to aid and receive the monies from the third party i.e. Mr. Sunil Roy and then reimburse the same to the Operational Creditor.

12. It is observed from the records that Corporate Debtor has been given multiple opportunities to appear before this Tribunal and plead his case. The corporate debtor chose not to appear and plead or file his reply on record. Therefore, the Corporate Debtor set *ex-parte*.

Findings:

13. We have heard the submissions of the Counsel appearing for the Operational Creditor and also perused the reply to the demand Notice dated 29.01.2019 by the Corporate Debtor.

14. From the records before us it is seen that the Operational Creditor has supplied goods to the Corporate Debtor vide various invoices which were delivered to the registered office of the Corporate Debtor. The Corporate Debtor has not replied to the Petition as required under the Code, also

chose not to appear and plead his case before this Tribunal. Therefore, we have set the Corporate Debtor ex-parte and proceeded with the matter.

15. On perusing the reply to the Demand Notice, it is noted that the Corporate Debtor has taken defence of existence of debt more particularly discrepancies in the invoices raised by the Operational Creditor. However, the said discrepancies were not communicated to the Operational Creditor before the date of Demand Notice. This fact can be corroborated from the communication attached to the Petition.

16. In fact contrary to the above, it is observed that the Corporate Debtor vide their various communications accepted the liability and gave assurances to pay the amount due.

17. In the above backdrop, the application made by the Operational Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount stipulated under Section 4(1) of the IBC. Therefore, the default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.

18. The Operational Creditor has proposed **Mr. Deepak Maheshwari, having Registered No. IBBI/IPA-001/IP-P00738/2017-2018-11266** as the Interim Resolution Professional in connection with the proposed Corporate Insolvency Resolution Process for the Corporate Debtor and the IRP has filed his consent in Form – 2 which is on record.

19. The Petition bearing **CP (IB) 1529/MB/C-I/2019** filed by **Sun International Flower Co. Limited,** the Operational Creditor, under section 9 of the IBC read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Fresh Connections Private Limited [CIN: U01132MH2013PTC251189],** the Corporate Debtor, is **admitted**.

20. There shall be a moratorium under Section 14 of the IBC, in regard to the following:

    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 (SARFAESI) Act, 2002;

    d. The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

21. Notwithstanding the above, during the period of moratorium: -

a. The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;

b. The provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;

22. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

23. Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

24. The Tribunal hereby appoints **Mr. Deepak Maheshwari**, Registration No. **IBBI/IPA-001/IP-P00738/2017-2018-11266**, Office at 412, D Wing, Neelkanth Business Park, Vidyavihar (West), Mumbai – 400086, Email: deepak@dwaindia.com as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as mentioned under IBC. The IRP shall carry out functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC. The fee payable to IRP/RP shall be compliant with Regulations, Circulars and Directions issued by the Insolvency & Bankruptcy Board of India (IBBI) as may be applicable.

25. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

26. The Operational Creditor shall deposit a sum of Rs.2,00,000/- (Rupees Two Lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).

27. The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.

28. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

29. Ordered accordingly.

Sd/-	**Sd/-**
SHYAM BABU GAUTAM	**JUSTICE P. N. DESHMUKH**
Member (Technical)	**Member (Judicial)**

11.11.2022
Priyal/Jenny