IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI (COURT NO. IV)

Company Petition No. IB-1175/ND/2019

(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:

M/S JANKI PARSHAD & COMPANY

(Through Its Proprietor)
Mr. Vijay Kumar Gupta

…Applicant/ Operational Creditor

VERSUS

M/S SUNDER AGROMILLS PRIVATE LIMITED

…Respondent/ Corporate Debtor

Judgment Pronounced on: 21.08.2019

CORAM:

DR. DEEPTI MUKESH
HON'BLE MEMBER (Judicial)

SH. HEMANT KUMAR SARANGI
HON'BLE MEMBER (Technical)

For the Applicant: Mr. Ashutosh Kumar Sharma, Adv. Mr. Vikas Kumar, Adv. Ms. Kritika Srivastava, Adv.
For the Respondent: Mr. Vinod Chaurasia, Adv.

MEMO OF PARTIES

M/S JANKI PARSHAD & COMPANY

(Through Its Proprietor)

Mr. Vijay Kumar Gupta

Registered office at: 39 A, Coronation Hotel Building

Fatehpuri, Delhi-110006

…Applicant/Operational Creditor

VERSUS

M/S SUNDER AGROMILLS PRIVATE LIMITED

Registered office at: 1107, 11 Floor, D -Mall

Plot No. A1, Netaji Subhash Place

Pitampura, Delhi-110034

…Respondent/ Corporate Debtor

JUDGEMENT

Dr. Deepti Mukesh, Member (J)

1. The Present Application is filed under section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC', 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by M/S Janki Parshad & Company (for brevity 'Applicant') with a prayer to initiate the Corporate Insolvency

process against M/S Sunder Agromills Private Limited (for brevity 'Corporate Debtor').

2. The Applicant is a company having its registered office at 39 A, Coronation Hotel Building, Fatehpuri, Delhi-110006. The Corporate Debtor is a limited company incorporated under the provisions of the Companies Act, 1956 on 11.10.2013 having CIN U7999DL2013PTC259119 as per Master Data and having registered office at 1107, 11 Floor, D -Mall, Plot No. A1, Netaji Subhash Place, Pitampura, Delhi-110034.

3. The Applicant has stated that it was providing the services as agent/ broker to corporate debtor of imported oils and fats for selling the goods in local markets. The Applicant had provided services with respect to brokerage services and the corporate debtor used to make payment against the said services. The Applicant was maintaining a running account of the corporate debtor and all the payments made by the corporate debtor towards commission bills for brokerage services provided by applicant were accounted in the said account.

4. The Applicant used to raise invoices in the name of the corporate debtor and the said were duly paid. The two invoices amounting to Rs 73,750/- and Rs 5,81,150/-, total amounting to Rs. 6,54,900/- remained unpaid and

even after sending various reminders to the corporate debtor to release the pending payments, no response was received by the applicant from the corporate debtor and hence the Applicant issued a demand notice dated 05.04.2019 in Form 3 & Form 4, under the provisions of section 8 of I&B Code, 2016 (Under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, calling upon the corporate debtor to pay the total outstanding amount of Rs. 6,54,900/-. The said notices were served through speed post which were duly received by corporate debtor on the address as reflected in master data of MCA website. The tracking record is also annexed to the application.

5. On 18.04.2019 the corporate debtor replied to the applicant vide email, assuring that the corporate debtor will release all overdue payments to the applicant as soon as possible. Further, the corporate debtor has enclosed TDS certificate 2017-18 with challan 2018-19 to express its clear intention of making payments but till date no such payment has been received by the applicant.

6. As a consequence, present Application is filed on 07.05.2019 under section 9 of IBC, 2016 and served the copy of this application through speed post and email address which has been duly delivered to the corporate debtor as per the tracking report.

7. The corporate debtor has replied to the application dated 15.07.2019 and has admitted its claim against the invoices raised by the applicant as follows:

"The corporate debtor accepts its liabilities as claimed by the applicant in its demand notice as well as in the application filed under section 9 of & B Code, 2016.

Further the corporate debtor has the clear and fair intentions to discharge the liabilities of the applicant. However, due to unfavorable business conditions, currently corporate debtor is unable to release the payments of applicant."

8. The date of default occurred from 16.03.2018 and hence the debt is not time barred and the application is filed within the period of limitation.

9. The Applicant has filed an affidavit under section 9(3)(b) affirming that no notice of dispute has been given by the Corporate debtor relating to dispute of the unpaid operational debt.

10. The registered office of corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.

11. The present application is complete and perusing the documents on records it goes beyond doubt that the Applicant is entitled to claim its dues, which remain uncontroverted and admitted by the Corporate Debtor, establishing

the default in payment of the operational debt beyond doubt. In the light of above facts and records the present application is admitted.

12. The Applicant has named the Insolvency Resolution Professional, to be appointed by the order of Tribunal, as Mr. Pankaj Khetan, with registration number IBBI/IPA-002/IP-N00010/2016-17/10014 (email – Pankaj.khetan@yahoo.com, Mobile No. 9999883725) as the Interim Resolution Professional subject to the conditions and disclosures as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016 within a period of one week from the date of this order.

13. We direct the Operational Creditor to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional namely Mr. Pankaj Khetan to meet out the expense to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount however be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Operational Creditor.

14. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016, the moratorium as envisaged under the provisions of Section 14(1) shall follow in relation to the Corporate debtor prohibiting proviso (a) to (d) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall come in vogue.

15. A copy of the order shall be communicated to the Applicant 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 IRP above named be also furnished with copy of this order forthwith by the Registry.

Sd/- **Sd/-**

HEMANT KUMAR SARANGI **DR. DEEPTI MUKESH**

MEMBER (T) **MEMBER (J)**