

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No.667/MB-IV/2020

Under Section 9 of the IBC, 2016

In the matter of

S.P.J Cargo Pvt. Ltd

[CIN: U63013DL2003PTC121227]

...Operational Creditor

v/s.

Blossom Grocery & Foods India Pvt. Ltd.

[CIN: U52100MH2007PTC172502]

...Corporate Debtor

Order Delivered on: 06.06.2023.

Coram:

Mr. Prabhat Kumar

Hon'ble Member (Technical)

Mr. Kishore Vemulapalli

Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner:

Mr. Balaji Harish Iyer a/w Anirudh
Suresh and Ayant Shaw, Ld. Counsel

For the Respondent:

None.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) S.P.J Cargo Pvt. Ltd, ("the Operational Creditor"), seeking initiation of Corporate Insolvency Resolution Process

(CIRP) in the case of Blossom Grocery & Foods India Pvt. Ltd., (“the Corporate Debtor”).

- 1.1. The petition is filed on 06/02/2020 claiming an amount of Rs.24,12,063/- as due and in default. The amount of claim includes principal amount of Rs. 22,31,197/- and interest of Rs. 1,80,866/- calculated at 24% p.a. as on 31.12.2019 after excluding agreed credit period of 30 days from the date of raising each invoice.
2. The Operational Creditor, on the request and demand of the Corporate, provided the services of freight forwarding, custom clearances and allied services and accordingly raised invoices.
 - 2.1. The Operational Creditor continued providing services and the balance kept accumulating over period of time as not much payment was received from Corporate Debtor.
 - 2.2. The Operational Creditor received an email from the Corporate Debtor with the Ledger statement between the parties for the current financial year on 13.09.2019 which shows the principal amount, as claimed in the petition, as due on the said date.
 - 2.3. As the outstanding was not cleared, the Operational Creditor sent emails claiming interest at 24% per annum as per the invoices raised. Subsequently, several follow-ups were made by the Creditor to the Corporate Debtor through telephonic conversations and emails to make good the outstanding amount, but the Corporate Debtor failed to clear the outstanding dues.

2.4. The Operational Creditor sent an email, with the directors of the Corporate Debtor marked in it, requesting them to release outstanding as they had promised to make all payments on a conference call between the parties.

2.5. In spite of repetitive reminders, the Corporate Debtor failed to pay and the Operational Creditor issued a statutory demand notice dated 13.01.2020 asking the Corporate Debtor to clear the outstanding dues of Rs.24,12,063/- within 10 days of receipt thereof. The said notice was served on the registered address of the Corporate Debtor and registered email ID of both the directors of the Corporate Debtor as per data available on Ministry of Corporate Affairs website on 17.01.2020.

3. The Corporate Debtor didn't file reply to the present application. Therefore, the right of Corporate Debtor to file reply was forfeited vide order dated 01.10.2021. Thereafter this matter was listed on 24.01.2022, 21.03.2022, 09.06.2022, 13.10.2022, 16.01.2023, 23.03.2023 and 15.05.2023, but the Corporate Debtor neither appeared nor filed any reply thereafter, and nor prayed for recall of order dated 01.10.2021.

Findings

4. We have heard the submissions made by the counsel representing the Applicant and perused the records.

4.1. This bench notices that as per the above narrated facts and material placed on record, no dispute has been raised with regards to the existence of Debt due to the Operational Creditor.

- 4.2. As per the material on record this Bench is of the view that, on perusal of the documents submitted by the Operational Creditor, it is clear that Operational Debt amounting to more than Rs.1,00,000/- (Rupees One Lakh Only) is due and payable by the Corporate Debtor to the Applicant. There is default by the Corporate Debtor in payment of debt amount. Therefore, we find that it is a fit case for initiation of CIRP against the Corporate Debtor, and that the petition is filed within the limitation period. This Tribunal has jurisdiction to adjudicate the Company Petition filed by the Operational Creditor and that there is a Debt due & payable by the Corporate Debtor. Since, the debt and default exist and no pre-existing dispute has been brought to our notice, it is a fit case for admission u/9 of IBC,2016.
5. During the course of hearing this bench vide order dated 13.10.2022 had directed the applicant to deposit a sum of Rs.5,00,000/- to fund initial CIRP cost which was set aside by the Hon'ble NCLAT vide order dated 16.11.2022 holding said direction as uncalled for. However, during the last hearing this bench informed a counsel of the applicant that a sum of Rs.2,00,000/- is to be paid to the Interim Resolution Professional as Interim Finance to fund the initial CIRP cost, in case the IRP requires such funding.
6. The Operational Creditor has proposed the name of the Interim Resolution Professional i.e. S. Gopalakrishnan, an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having registration number IBBI/IPA-002/IP-N00151/2017-2018/10398 Email: gopi63.ip@gmail.com. and has also filed consent dated 16.05.2023.

7. In view of the above, we find that the present case deserves to be admitted under Section 9 of the Insolvency and Bankruptcy Code, 2016.

ORDER

8. The petition bearing CP (IB) No.667/MB-IV/2020 filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by S.P.J Cargo Pvt. Ltd, (“the Operational Creditor”), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the case of Blossom Grocery & Foods India Pvt. Ltd., (“the Corporate Debtor”) is **Admitted**.

I. That this Bench as a result of this prohibits:

- 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 Securitization and Reconstruction of Operational 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 possession of the corporate debtor.

- II. That 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.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to
 - a. such transactions as may be notified by the Central Government in consultation with any Operational sector regulator;
 - b. a surety in a contract of guarantee to a Corporate Debtor.
- IV. That the order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- VI. The bench hereby appoints S. Gopalakrishnan, an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having registration number IBBI/IPA-002/IP-N00151/2017-2018/10398 Email: gopi63.ip@gmail.com. He is appointed as IRP for conducting CIRP of the Corporate Debtor and to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.

- VII. 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.
- VIII. The Operational Creditor shall deposit a sum of Rs.2,00,000/- (Rupees two lakh only) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims. The amount so deposited shall be interim finance and paid back to the applicant on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).
- IX. 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.
- X. 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.

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)
06.06.2023.

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)