IN THE NATIONAL COMPANY LAW TRIBUNAL, COURT-VI, MUMBAI

CP (IB) No. 215/MB/2020

[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 R.B IMPEX
B-153, Second Floor,
New Subzi Mandi, Azadpur,
Delhi-110033. **…Operational Creditor**

Versus

M/S GREENERIES AGRO PRIVATE LIMITED
[CIN U01403MH2015PTC263449]

Registered Office: Gali No.-V-1176,
APMC Vegetable Market, Plot No. 17-B,17C,
18 Sector-19, Vashi Mumbai,
Thane-400705, Maharashtra.
ALSO AT :
46/2, Sector 18,
Mafco Yard, Near Bajrang Cold Store,
Nafed Warehousing,
Navi Mumbai -400703. **...Corporate Debtor**

Order Reserved on: 12.09.2023
Order Pronounced on: 13.12.2023

CORAM:

HON'BLE SHRI K. R. SAJI KUMAR, MEMBER (JUDICIAL)

HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)

Appearances/Video conference/Physical(Hybrid mode):

Operational Creditor: Adv. Parth K. Mehta i/b AKJ Law Associates
Corporate Debtor : None present. (ex-parte)

ORDER

***[Per*: SANJIV DUTT, MEMBER (TECHNICAL)]**

1. Background

1.1 This Application bearing C.P. (IB) No.215/(MB)/2020 was filed on 21.12.2019 by M/s R.B Impex, the Operational Creditor, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code") for initiating Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") in respect of M/s Greeneries Agro Private Limited, the Corporate Debtor.

1.2 On perusal of the Memo of Parties, it is noticed that the Operational Creditor has also arrayed Ministry of Corporate Affairs (Mumbai) through its Registrar of Companies, Mumbai as Corporate Debtor in the present Application. However, the Counsel for the Operational Creditor could not explain as to why the Operational Creditor had done so. Therefore, the Ministry of Corporate Affairs (Mumbai) through its Registrar of Companies, Mumbai is found to have been wrongly arrayed as a party since no cause of action is complained of against it.

1.3 The Operational Creditor is a registered partnership firm engaged in the business of supplying imported fresh fruits. It has authorized Mr. Bhavesh Gidwani, Partner to appear and represent in the Tribunal by way of Power of Attorney dated 20.12.2019 executed by the Partners. The case of the

Operational Creditor is that it had been supplying imported fresh fruits to the Corporate Debtor since its inception in September, 2016 against purchase orders received via whatsapp messenger.

1.4 The Operational Creditor maintained a running account for the fresh fruits purchased by the Corporate Debtor. An amount of Rs.17,33,850/- (Rupees Seventeen Lakh Thirty-Three Thousand Eight Hundred Fifty Only) was owed by the Corporate Debtor to the Operational Creditor as on 20.09.2019 in respect of the fruits supplied. Meanwhile, there was a default on part of the Corporate Debtor in payment of aforesaid amount of operational debt to the Operational Creditor which remained unpaid even after service of the statutory demand notice on the Corporate Debtor on 07.11.2019. This led to the filing of the present Application by the Operational Creditor seeking initiation of CIRP against the Corporate Debtor.

2. Averments of the Operational Creditor

2.1 It is stated that the Corporate Debtor had approached the Operational Creditor in the year 2016 and thereafter it was agreed between parties that the Operational Creditor shall supply imported fresh fruits to the Corporate Debtor on credit basis. The Operational Creditor maintained a running account for the fresh fruits purchased by the Corporate Debtor. A copy of statement of account/ ledger of the Corporate Debtor for the goods supplied from 21.02.2019 to 20.09.2019 has been enclosed with this Application showing operational debt of Rs.17,33,850/- due from the Corporate Debtor to the Operational Creditor as on 20.09.2019.

2.2 The Operational Creditor submits that the Corporate Debtor defaulted in making full payment of said amount of Rs.17,33,850/- owed to the Operational Creditor on account of supply of imported fruits to the Corporate Debtor.

2.3 Due to the non-payment of its outstanding dues, the Operational Creditor approached the Corporate Debtor and requested the latter to clear the said operational debt. Thereafter, the Corporate Debtor issued three cheques bearing Nos.95117, 003557 and 003514 dated 27.06.2019, 04.07.2019 and 03.08.2019 amounting to Rs.3,42,000/-, Rs.5,05,800/-, and Rs.4,64,900/- respectively towards part payment of its dues to the Operational Creditor. However, when the Operational Creditor presented the above mentioned cheques for encashment, all the three cheques were dishonoured with the endorsements “Funds Insufficient” and “Stop Payment” vide bank memos dated 04.09.2019 and 19.09.2019 respectively.

2.4 The Operational Creditor thus submits that the operational debt of Rs.17,33,850/- was still due and payable by the Corporate Debtor and is owned by the Corporate Debtor.

2.5 Thereafter, the Operational Creditor issued a Demand Notice to the Corporate Debtor vide Speed Post on 09.10.2019 at its registered office address as per MCA website which was returned undelivered with the remarks "Item returned. Addressee left without instruction".

2.6 The Operational Creditor further submits that it issued a fresh Demand Notice dated 02.11.2019 via Speed Post to the Corporate Debtor on 04.11.2019 on the address of its warehouse located in Navi Mumbai which was duly received by the Corporate Debtor on 07.11.2019 and by its Director, Mr. Sachin Shivaji Chavan on 11.11.2019 as per the Speed Post tracking reports placed on record by the Operational Creditor. It is stated that despite service of Demand Notice on the Corporate Debtor and its Director as mentioned above, neither the Corporate Debtor nor the Director concerned had furnished any reply.

2.7 The Operational Creditor points out that with regard to the dishonoured cheques, a criminal complaint has also been filed in the Court of Metropolitan Magistrate, Rohini, Delhi.

3 <u>Contentions of the Corporate Debtor</u>

3.1 Despite proper service of Court notice on the Corporate Debtor on 06.10.2021, the Corporate Debtor neither appeared on subsequent dates of hearing nor submitted its reply before this Bench. Due to continuous non-appearance of the Corporate Debtor throughout the adjudication proceedings, the Corporate Debtor was set *ex parte* by this Tribunal *vide* order dated 29.08.2022.

4 <u>Analysis & Findings</u>

Upon due consideration of the pleadings along with the materials available on record and hearing the Counsel for the Operational Creditor, our findings in the matter are as under:-

4.1 We find that the debt of Rs.17,33,850/- owed by the Corporate Debtor to the Operational Creditor against the supply of imported fresh fruits falls within the meaning of "operational debt" under Section 5(21) of the Code. The Operational Creditor has placed on record print-out of statement of running account/ ledger of the Corporate Debtor for the period from 21.02.2019 to 20.09.2019 maintained in the ERP system of the Operational Creditor showing outstanding amount of Rs.17,33,850/- due from the Corporate Debtor as on 20.09.2019. An Affidavit under Sections 65A and 65B of the Indian Evidence Act, 1872 has been submitted by the Operational Creditor along with the Application supporting the claim made by the Operational Creditor.

4.2 We also find that the Corporate Debtor defaulted in payment of the rightful dues of the Operational Creditor and, therefore, the Operational Creditor issued a Demand Notice dated 02.11.2019 to the Corporate Debtor as mandated under Section 8(1) of the Code in the prescribed Form demanding payment of the outstanding amount. Despite diligent efforts made by the Operational Creditor in serving the Demand Notice vide speed post on the address of the warehouse of the Corporate Debtor on 07.11.2019 and further on its Director Mr. Sachin Shivaji Chavan on 11.11.2019 to pay the total sum of Rs.17,46,675/- including interest of Rs.12,825/-, the Corporate Debtor neither responded to the aforesaid Demand Notice nor made payment of the outstanding operational debt.

4.3 On perusal of the materials available on record, we find that there is nothing to show that any dispute existed between the parties much before the issuance of the Demand Notice. The Operational Creditor has filed an Affidavit under Section 9(3)(b) of the Code, *inter alia* affirming that the Corporate Debtor had not given any notice of pending dispute and that there was no dispute between the Operational Creditor and the Corporate Debtor with respect to the transaction involving the operational debt in question pending before the aribitral or any judicial fora. Hence, it can safely be concluded that there is no pre-existing dispute between the parties regarding the amount of operational debt in default.

4.4 There is nothing on record to demonstrate that the Corporate Debtor had made payment of the unpaid operational debt to the Operational Creditor subsequent to the receipt of the Demand Notice. The Operational Creditor has furnished copies of statement of its Bank Account Nos.50200015933092 and 50200018312515 maintained with the HDFC Bank at New Delhi and Navi Mumbai Branches from 01.02.2019 to 31.10.2019 showing that no payment of the unpaid operational debt by the Corporate Debtor to the Operational Creditor was reflected therein during the said period.

4.5 Despite numerous opportunities afforded by this Adjudicating Authority to the Corporate Debtor to appear before us to present its case, the Corporate Debtor failed to take any steps to furnish its reply or to present any defence. Consequently, the Corporate Debtor was set *ex parte* on 29.08.2022 and the matter was heard on the basis of the pleadings made in the Application and arguments put forth by the Counsel for the Operational Creditor.

4.6 The date of default mentioned by the Operational Creditor in Part-IV of the Application is 19.09.2019 when the cheques bearing no 003514 was dishonoured. The Demand Notice also specifies the same date of default. The present Application filed by the Operational Creditor on 21.12.2019 is thus well within the period of limitation under Section 238A of the Code read with Article 137 of the Limitation Act, 1963 thereby making it maintainable for adjudication.

4.7 From the above discussion, it is clear that there was a default on part of the Corporate Debtor in payment of undisputed operational debt to the Operational Creditor of more than Rs.1,00,000/- (Rupees One lakh) being the threshold monetary limit under Section 4 of Code prevailing on the date of present Application. Thus, this Application preferred by the Operational Creditor under Section 9 of the Code is found to be maintainable. The Application is complete and has been filed in the prescribed form. In view of the above, we find that the matter is fit for admission under Section 9(5)(i) of the Code.

ORDER

This Application bearing C.P.(IB) No.215/MB/2020 filed under Section 9 of the Code by M/s R.B Impex, the Operational Creditor, for initiating CIRP in respect of M/s Greeneries Agro Private Limited, the Corporate Debtor is hereby **admitted.**

We further declare moratorium under Section 14 of Code with consequential directions as follows:

I. We prohibit-

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 of 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 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.

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

V. That the public announcement of the CIRP shall be made immediately in accordance with Section 13 of the Code and the relevant Rules and Regulations made thereunder.

VI. That this Bench hereby appoints **Mr. Sagar Shah, a registered Insolvency Professional having Registration Number-IBBI/IPA-001/IP-P02775/2023-2024/14292 and Email ID-sagarshahca@gmail.com** as the Interim Resolution Professional (IRP) to carry out the functions under the Code. The fee payable to IRP/RP shall be in accordance with the Regulations/Circulars issued by the IBBI.

VII. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of section 17 of the Code. 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. In exercise of the powers under Rule 11 of the NCLT Rules, 2016, we order the Operational Creditor to deposit a sum of Rs.5,00,000/- (Five Lakh Rupees) 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, etc. The amount so deposited shall be interim finance and paid back to the Operational Creditor on priority upon funds from the Committee of Creditors (CoC) becoming available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the CoC.

IX. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai for updating the Master Data of the Corporate Debtor.

X. The Registry is directed to immediately communicate this order to the Operational Creditor, the Corporate Debtor and the IRP including by way of email and WhatsApp.

XI. Besides, a copy of this order shall also be forwarded by the Registry of this Tribunal to the IBBI for their record.

XII. Compliance report of the order by Designated Registrar is to be submitted today.

Sd/-	**Sd/-**
SANJIV DUTT	**K. R. SAJI KUMAR**
MEMBER (TECHNICAL)	**MEMBER(JUDICIAL)**

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