IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH - I

KOLKATA

C.P (IB) No. 505/KB/2019

An application 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:

Khaitan Rice Mill Private Limited[CIN U15312WB2004PTC098187], having registered office at 16 Strand Road, 'Diamond Heritage', New Block, 14th Floor, Unit: N-1413, Kolkata - 700001

...Operational Creditor

Versus

Radhashyam Industries Private Limited [CIN U74900WB2013PTC197187**],** having registered office at 46B, Rafi Ahmed Kidwai Road, 1st Floor, Kolkata 700016.

...Corporate Debtor

Date of Hearing: 06.05.2022

Date of pronouncing the order: 20.05.2022

Coram:

Shri Rajasekhar V.K.	***:***	***Member (Judicial)***
Shri Balraj Joshi	***:***	***Member (Technical)***

Appearances (through Video Conferencing)

For the Operational Creditor	:	Mr. Joy Saha.Sr. Adv.
	:	Mr. Kumarjit Banerjee, Adv.
	:	Ms.Sanchari Chakraborty, Adv
For the Corporate Debtor	:	None

ORDER

Rajasekhan V.K., Member (Judicial)

1. The Court convened *via* hybrid mode.

2. This is a Company Petition filed under section 9 of the Insolvency and Bankruptcy Code, 2016 ***('the Code')*** read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Mr. Rahul Khaitan, Director, Khaitan Rice Mill Private limited ***('Operational Creditor')***, duly authorized *vide* Letter dated 22 March, 2019[1]to initiation of Corporate Insolvency Resolution Process ***('CIRP')*** against Radhashyam Industries Mills Private Limited***('Corporate Debtor')***.

3. The present Petition was filed on 02 April, 2019 before this Adjudicating Authority. The total amount claimed in default is Rs.25,77,322/- (Rupees Twenty Five Lakh Seventy Seven Thousand Three Hundred Twenty Two), inclusive of interest calculated @18% p.a. till ***06 December, 2018***, which is also stated to be the date of default.

4. It is submitted in the Petition, Part – II that the authorised share capital of the Corporate Debtor is Rs.5,00,00,000/- (Rupees Five Crore only) with paid up Capital as Rs.4,95,00,000/- (Rupees Four Crore Ninety Five Lakh only).

5. Submissions by the Ld. Sr. Counsel appearing on behalf of Operational Creditor.

5.1 The Operational Creditor is engaged in the business of trading and supplying of the Rice Brans. The Corporate Debtor in its usual course of business approached the Operational Creditor for purchasing 1054.76 quintals of Rice Brans, which was to be supplied in the month of November and December, 2018 at Rs.1700/quintals.

5.2 Thereafter, as agreed between the parties, the Operational Creditor supplied the Rice Brans to the Corporate Debtor at their depot at Galsi, against which several invoices dated 15 November, 2018, 16 November, 2018, 23 November, 2018, 29 November, 2018, 30 November, 2018, 05 December, 2018 and 06 December,

[1]Annexure – B, page 17 of the Petition.

2018 were raised by the Operational Creditor.[2] The invoices were duly received by the Corporate Debtor without any objection.

5.3 However, on failure of the Corporate Debtor to clear the invoices several reminders were sent by the Operational Creditor to the Corporate Debtor. To such reminders the Corporate Debtor duly assured to the Operational Creditor that it shall make payments of the outstanding sum. Inspite of several reminders and assurances the outstanding stood due and payable.

5.4 Thereafter, a statutory notice dated 04 March, 2019 under section 8 of the Code was sent by the Operational Creditor and the same was received by the Corporate Debtor.

5.5 The parties had also entered in a separate agreement for supply of 250 quintals of ‘Mota’ Rice Brans of lower quality at Rs.900/quintals. However, said transaction is not the subject matter of the instant application.

6. Submissions by the Corporate Debtor in its reply

6.1 In pursuance of the statutory notice dated 04 March, 2019, the Corporate Debtor replied to the Operational Creditor *vide* reply notice dated 27 March, 2019. However, no such reply was brought on record with respect to the said notice by the Operational Creditor.

6.2 As per the terms of negotiations and understandings between the parties the price of all materials was agreed to be Rs.9000/- per metric ton but from time to time the materials were also delivered at an agreed cost of Rs.7000/- per metric ton. The Corporate Debtor every so often would make payments against the invoices raised by the Operational Creditor. It was on 31 March, 2018 the entire amount was settled between the parties.

6.3 Further, the price of Rice Bran depends on the oil contained therein. The oil contained in the Rice Bran varies from 6% to 30%. From the demand of Rs.25,77,322/- on account of eleven disputed invoices by the Operational Creditor, it appears that they have claimed Rs.17000/- per metric ton. If taken into the agreed consideration of Rs.9000/- per metric ton against the eleven disputed invoices then the aggregate sum would be Rs.9,96,748/-

[2] Annexure – D of the Petition.

6.4 Whenever the Corporate Debtor received the Rice Bran they got it tested and also informed the Operational Creditor about the oil content of the material supplied and the Operational Creditor had duly acknowledged and confirmed the oil content.

6.5 The directors of the Operational Creditor also own a Company in the name of '*Jay Baba Bakreswar Rice Mills Private Limited*'. The Corporate Debtor used to purchase Rice Ban from the Operational Creditor and from Jay Baba Bakreswar Rice Mills Private Limited on the same agreed terms and conditions and payments were made by the Corporate Debtor in their separate accounts.

6.6 During the conciliation between the parties it was noticed that a sum of Rs.22,76,950/- was paid in excess to the Operational Creditor, which the Operation Creditor was supposed to return to the Corporate Debtor. However, after some family dispute, the operational Creditor raised eleven disputed invoices with incorrect and higher calculation at Rs.17000/- per metric ton. After conciliation, a sum of Rs,6,09,299/- is only due and payable to the Operational Creditor.

6.7 After making a detailed enquiry with the accounts department, following facts were revealed;

i. During the period 01 April, 2018 till 27 March, 2019 the Operational Creditor raised forty-six invoices.

ii. From the records it appears that till 14 November, 2018 the Operational Creditor raised invoices at the rate of Rs.9000/- per metric ton or Rs.7000/- per metric ton. On and from 15 November, 2018 the Operational Creditor had wrongfully raised invoices at the rate of Rs.17000/- per metric ton.

iii. As per the test reposts it is evident that the eleven disputed invoices were raised at an inflated rate. However, after reconciliation, the forty-six invoices raised between 01 April, 2018 to 06 December, 2018 would come to a sum of Rs.40,62,119/- out of which the Corporate Debtor has already paid an amount of Rs.34,52,820/- and a sum of Rs,6,09,299/- is only due and payable to the Operational Creditor

7. In response to the Reply by the Corporate Debtor, the Operational Creditor in its Rejoinder submits that;

7.1 The Corporate Debtor in a desperate attempt to wriggle out of its obligation has made a case with respect to the said eleven invoices. On and from December, 2019, the representative of the Operational Creditor had been following up with the representative of the Corporate Debtor for the disbursement of the outstanding dues.

7.2 Because of the existing family disputes the Corporate Debtor refused to disburse the outstanding dues to the Operational Creditor. Further, no disputes were even raised by the Corporate Debtor with respect to the quality of the goods.

Analysis and Findings

8. Heard the Ld. Sr. Counsel appearing for the Financial Creditor and perused the concerned documents annexed to the Petition.

9. It is pertinent to mention that the matter was heard from time to time[3] but none appeared on behalf of the corporate Debtor. Though there was no representation on behalf of the Corporate Debtor at the hearing held on 23 July, 2021, 02 September, 2021, 26 October, 2021, 25 November, 2021, 17 December, 2021, 07 January, 2022, 18 February, 2022, 28 March, 2022, 27 April, 2022. However, a reply affidavit has been filed the Corporate Debtor through its Advocate Mr. Ayan Kumar Boral. The last appearance of the Advocate on behalf of the Corporate Debtor was on 19 February, 2020

10. From perusal of the record it is noticeable that the only rebuttal raised by the Corporate Debtor is pertaining to the amount due and payable. The Operational Creditor states that the outstanding due is of Rs.25,77,322/- (inclusive of interest calculated @ 18% p.a. till 06 December, 2018*)* whereas, the Corporate Debtor in its reply (*at page 71*) has ***categorically admitted*** that the outstanding due is of Rs.6,09,299/- This acceptance by the Corporate Debtor ticks the check box of debt and default.

11. Further this instant application was filed on 02 April, 2019, hence, it falls within the threshold limit applicable then under the Code. As envisaged under section

[3]23 July, 2021, 02 September, 2021, 26 October, 2021, 25 November, 2021, 17 December, 2021, 07 January, 2022, 18 February, 2022, 28 March, 2022, 27 April, 2022

9(3)(b) of the Code, an affidavit has been filed by the Operational Creditor and also, from the available record, it is evident that the Corporate Debtor had neither raised any dispute with respect to the services of the Operational Creditor. It is also pertinent to mention that no interest component has been mentioned in the invoices.

12. It is, accordingly, hereby ordered as follows:-

a) The application bearing ***CP (IB) No. 505/KB/2019*** filed by Khaitan Rice Mill Private limited, the Operational Creditor, under section 9 of the Code read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against Radhashyam Industries Mills Private Limited, the Corporate Debtor, is ***admitted***.

b) There shall be a moratorium under section 14 of the IBC.

c) 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.

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

e) ***Ms. Priyanka Ajitsaria***, registration number ***IBBI/IPA-001/IP-P-02360/2021-2022/13858***, email: ***ppandco@gmail.com***, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.

f) 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 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 one week from the date of receipt of this Order, in default of which coercive steps will follow.

g) The IRP/RP shall submit to this Adjudicating Authority periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.

h) The Operational Creditor shall deposit a sum of ***Rs.3,00,000/- (Rupees Three 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).

i) In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby 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.

j) Additionally, the Operational Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, Kolkata by all available means 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.

13. **CP (IB) No. 505/KB/2019** to come up on ***27 July, 2022*** for filing the periodical report.

14. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

BALRAJ JOSHI
Digitally signed by BALRAJ JOSHI
Date: 2022.05.20 22:31:31 +05'30'

Balraj Joshi
Member (Technical)

Rajasekhar V K
Digitally signed by Rajasekhar V K
Date: 2022.05.20 20:05:25 +05'30'

Rajasekhar V.K.
Member (Judicial)

The order is pronounced on 20th day of May , 2022

Safura A., [LRA]