

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH-II, CHENNAI

CP(IB)/192(IBC)/2023

*(filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w Rule
6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority)
Rules, 2016)*

In the matter of M/s. Orient Frozen Foods LLP

M/s. Divine Projects.,

Represented by its partner

Mr. Srinivasalu Reddy Indela

4/1347/A, Nawabpeta, Ramachandrapuram,

Nellore – 524002, Andhra Pradesh.

... Applicant/ Operational Creditor

Vs.

M/s. Orient Frozen Foods LLP.,

LLPIN: AAD-6372

Having its Registered Office at:

No.51/1B2, No 4, Poovalai Village Gummidipundi Taluk,

Thiruvallur, Thiruvallur,

Tamil Nadu, India, 601201.

... Respondent/ Corporate Debtor

Order Pronounced on 20th December 2024

CORAM

SHRI JYOTI KUMAR TRIPATHI, MEMBER (JUDICIAL)

SHRI RAVICHANDRAN RAMASAMY, MEMBER (TECHNICAL)

Present:

For Operational Creditor : Mr. A.G. Sathyanarayana, Advocate

For Corporate Debtor : Mr. V. Regunathan, Sankar Varadharajan,
Advocate

ORDER

(Heard through Hybrid)

1. This Petition has been filed under Section 9 of the Insolvency and Bankruptcy code, 2016 (“IBC”) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by **M/s. Divine Projects.**, (hereinafter referred to as ‘**Operational Creditor**’) seeking to initiate Corporate Insolvency Resolution Process against **M/s. Orient Frozen Foods LLP** (hereinafter referred to as ‘**Corporate Debtor**’).

2. Part-I of the Petition sets out of the details of the Operational Creditor. It is averred that the Operational Creditor **M/s. Divine Projects** is a partnership firm, which is represented by Mr. Srinivasalu Reddy Indela with its office situated at 4/1347/A, Nawabpeta, Ramachandrapuram, Nellore, Andhra Pradesh – 524002.

3. Part-II of the Petition sets out the details of the Corporate Debtor, **M/s. Orient Frozen Foods LLP** as a Limited liability partnership company incorporated on 26th March 2015, under Limited Liability partnership Act, 2008, having its registered office at No.51/1B2, No 4, Poovalai Village Gummidipundi Taluk, Thiruvallur District, Tamil Nadu, India - 601201.

4. In Part-III of the Petition the Operational Creditor has not proposed any Insolvency Professional to act as a Resolution Professional.

5. Part-IV of the Petition states that the total outstanding Debt is Rs.1,60,66,568/- (Rupees One Crore Sixty Lakhs Sixty Six Thousand Five Hundred and Sixty Eight Only) along with 36% interest per annum till 31.07.2023. The Date of Default is shown as 26.01.2023.

6. Part-V of the Petition describes the particulars of the Operational Debt, documents, records and evidence of the default as below:

- a) Copy of 7 Invoices with e-way bills dated from 04.12.2022 to 26.12.2022.
- b) Demand Notice under Form 3 of IBC (Application to Adjudicating Authorities) Rules 2016 dated 11.10.2023
- c) Copy of the ledger of the Corporate Debtor in the books of the Operational Creditor.
- d) Copy of computation showing the details of the outstanding amount and date of default along with the calculation of interest.
- e) Copy of the letter dated 31th Oct 2023 reminding the Corporate debtor's outstanding due by Operational Creditor & copy of mails dated 11th Oct 2023 demanding the repayment of default amount from the Corporate Debtor.

ARGUMENTS ON BEHALF OF APPLICANT:

7. It is stated that the Operational Creditor is a service provider company, whereas the Corporate Debtor is a company which focuses on Production of sea food products, primarily engaged in processing and preserving of fish crustacean and similar foods.

8. It is stated that the operational creditor/applicant supplied Shrimp to the Corporate Debtor from time to time, to the full satisfaction of the Corporate Debtor and further it is submitted that there was no dispute regarding the supply of goods.

9. It is stated that the Corporate debtor/Respondent has failed to make the payment for the outstanding dues against the invoices from 04.12.2022 to 26.12.2022 for the tune of Rs.1,24,19,576/- being the principle outstanding. It is stated that the corporate debtor is liable to pay of Rs.1,60,66,568/- which includes interest @ 36% p.a. The relevant portion is extracted below,

UNDER THE INSOLVENCY AND BANKRUPTCY CODE, 2016 FORM OF DEMAND NOTICE / INVOICE DEMANDING PAYMENT

1 message

Divine Projects <divineprojectsp@gmail.com>
To: orientfrozenfoods@gmail.com

Wed, Oct 11, 2023 at 10:58 PM

Dear Sathya Sivakumar Guddati,

Subject: Demand notice/invoice demanding payment in respect of unpaid operational debt due from M/s Orient Frozen Food LLP.

We have been following up with you for the payment of below mentioned overdue payments. We have had many discussions on these pending invoices,

but none of the payment commitments are honored from your end.

Please find below the details of the outstanding balances as on 31st July,2023

Sl	Invoice Number	Dated	Amount
1	183/DIS NO 196 (Patial outstanding)	04/12/2022	2,80,159/-
2	184/DIS NO 207	21/12/2022	9,04,917/-
3	185/DIS NO 208	21/12/2022	10,19,520/-
4	186/DIS NO 209	21/12/2022	70,006/-
5	187 188/DIS NO 210	23/12/2022	15,02,402/-
6	189 195/DIS NO 211	24/12/2022	42,87,381/-
7	196 201/DIS NO 212	26/12/2022	43,55,191/-
Total Amount Outstanding.			1,24,19,576/-
Interest at 36% as on 31st March,2023.			19,25,565/-
Total Outstanding as on 31st March,2023			1,43,45,141/-
Interest as at 36% on 31/07/2023			17,21,417/-
Total Outstanding as on date 31st July,2023			1,60,66,558/-

With respect to the above subject matter and reference, it is submitted that as per our books of accounts the you have an outstanding balance of Rs 1,60,66,558/- (Rupees One crore sixty lakhs sixty-six thousands and five fifty-eight only) payable to our Company as on date.

We had many discussions and follow up for the release of the payment in due course. But we have not received any confirmation from your end for the release of the same.

This demand for payment letter serves as formal notice to you and may be used in court as evidence of your failure to pay. You may be liable for attorney fees and court costs if legal recourse is required. Your credit may be affected if we turn this debt over to our collection agency or file a lawsuit. You can protect your credit history by choosing one of the options above to resolve this debt. Therefore, we demand you pay the amount within 15 days of receipt of this letter.

10. The operational creditor/applicant has sent demand notice dated 11.10.2023 in demanding payment with respect to unpaid debt due from M/s Orient Frozen Food LLP.

11. The Operational Creditor further stated that several emails have been sent to the Corporate Debtor to repay the debt amount, but the corporate debtor has defaulted in making such payment. Further, the operational creditors have also submitted the 7 invoices for evidencing the delivery made to the Corporate Debtor. The operational creditor/applicant has annexed a copy of the letter dated 17th October 2023 with the subject 'Reminder for release of pending outstanding dues' and mails with subject matter 'Confirmation of Balances from CD' with the type set.

REPLY BY THE CORPORATE DEBTOR:

12. It is stated that the corporate debtor, has established and commenced its business in 2015. It is stated the corporate debtor is a 9 year old company involved in the business of sea food processing but is not limited to processing of shrimps, crabs, lobsters, fish oil etc,.

13. It is stated that the operational creditor/ applicant was asked to supply the Shrimp to the corporate debtor/ Respondent and in pursuant to which the applicant has supplied shrimp to the corporate debtor. The Respondent further submits that due to COVID 19 pandemic and natural

calamities like flood the operations of the Corporate Debtor took a down turn which lead to default in repaying the due amounts to Operational creditor.

14. Respondents/corporate debtor submits that the Operational Creditor has raised several invoices for the supply of shrimp, and admits they had never raised any objection regarding the supply of goods and non-payment of dues to Operational creditor.

15. Respondents/corporate debtor stated that, the Operational creditor vide e-mail dated 11.10.2023 demanded a sum of Rs.1,60,66,558/- as due and payable. Respondent did not reply to the above email.

16. The Respondent further objected that the amount demanded by the operational creditor is not in par with the records available with them. The interest rate charged by the Operational creditor @ 36% p.a is exorbitant and enormous so as to cover the threshold limit as fixed u/s 4 of IBC,2016 and to maintain the Petition u/s 9 of IBC, 2016.

ANALYSIS AND CONCLUSION

17. We have heard the learned Counsels for both the parties and perused the documents on record.

18. It is stated that this present Petition is filed for initiation of CIRP against the corporate debtor. On perusal of records it was noticed that the

Respondent/corporate debtor has admitted there is no dispute regarding the supply of shrimp by the operational creditor and main issue is regarding to the payment defaulted by the corporate debtor in respect of goods supplied by the applicant/ operational creditor.

19. The operational creditor/ applicant has sent Demand notice dated 11.10.2023 to corporate debtor/ Respondents to repay the due amount and claims a sum of Rs.1,60,66,558/- along with 36% p.a of interest (until the repayment of debt is made) from the corporate debtor.

20. On perusal of records, this Tribunal finds that there is no pre-existing dispute between the parties and the Respondent/ corporate debtor has defaulted in making the payment to the operational creditor which has been acknowledged by the corporate debtor himself. . Thus, in the instant case the element of default has been established.

21. The Respondent/corporate debtor did not produce any substantive document before this tribunal to justify his averments regarding mismatch in the records maintained between the parties relating to the actual dues payable by the corporate debtor.

22. Upon perusing the invoices filed by the Operational Creditors we find that the transaction existed between the applicant and the Respondent is for supply of goods which is operational in nature.

23. In so far as the maintainability of this case, we see that the Principle claim as Rs.1,24,19,576/- (Rupees One Crore Twenty Four Lakhs Nineteen Thousand Five Hundred and Seventy Six Only) from the 7 invoices submitted by the applicant, which has met the minimum threshold of Rupees One Crore as prescribed under Section 4 of IBC, 2016 and hence this Petition is maintainable.

24. Upon considering the invoices submitted by the applicant dated between 04.12.2022 – 26.12.2022, we are of the view that this petition is not barred by limitation.

25. Taking into consideration the facts and circumstances of the case, as well as the position of Law, we are of the view that the petition filed by the Operational Creditor, is required to be **Admitted** under Section 9(5) of the IBC, 2016.

26. In the present case, The operational creditor has not proposed any IRP name and hence this Tribunal appoints **Mr.Pitchai** having **RegNo: IBBI/IPA-001/IPP02527/20212022/14040**, (Email: *pitchai.a1958@gmail.com*) whose AFA is valid till **30.06.2025** as the “Interim Resolution Professional” (IRP) in respect of the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required under the Code, more specifically in terms of Section 15, 17,18 of the Code and file the report within 20 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand

superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

27. As a consequence of the Petition being admitted in terms of Section 9 (5) of the Code, the moratorium as envisaged under the provisions of Section 14 shall apply in relation to the Corporate Debtor as under:

“ 1. Subject to provisions of subsections (2) and (3) on the insolvency commencement date the Adjudicating Authority shall by order declare prohibiting all of the following namely:

- a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent 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 respondent in respect of its property including any action under the Securitization 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 the possession of the respondent.*

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;

- (2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.*

- (2A) *Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.*
- (3) *The provisions of sub-section (1) shall not apply to*
- (a) *such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;*
 - (b) *a surety in a contract of guarantee to a corporate debtor."*
- (4) *The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process: Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be."*

28. The Operational Creditor is directed to pay a sum of **Rs.2,00,000/- (Rupees Two Lakhs only)** to the Interim Resolution Professional to meet out the expenses to perform the functions assigned to him in accordance to Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

29. Based on the above terms, the Petition stands **Admitted** in terms of Section 9(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the Order shall be communicated to the Operational Creditor 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 Interim Resolution Professional above named be also furnished with copy of this Order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

RAVICHANDRAN RAMASAMY
MEMBER (TECHNICAL)

JYOTI KUMAR TRIPATHI
MEMBER (JUDICIAL)