THE NATIONAL COMPANY LAW TRIBUNAL
"CHANDIGARH BENCH, CHANDIGARH"
(Exercising powers of Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016)

CP (IB) No. 129/Chd/Hry/2021
Under Section 9 of Insolvency and Bankruptcy Code, 2016.

In the matter of:

Aviagen India Poultry Breeding Company Pvt. Ltd.
having its registered office at
Elayamuthur Gandhinagar
Udumalpet Taluk, Thiruppur,
Tamil Nadu- 642154

…Petitioner-Operational Creditor

Vs.

M/s. Redhu Farms Private Limited
having its registered office at
Assandh Road, Village and PO Alewa, Jind
Jind, Haryana- 126102
CIN No: U01122HR2002PTC034897

…Respondent-Corporate Debtor

Judgement delivered on: 30.03.2023

Coram: Hon'ble Mr. Harnam Singh Thakur, Member (Judicial)
Hon'ble Mr. Subrata Kumar Dash, Member (Technical)

For the Petitioner-Operational Creditor : Ms. Karuna Sharma, Advocate
For the Respondent-Corporate Debtor : Mr. Devansh Sharma, Advocate

Per: Harnam Singh Thakur, Member (Judicial)

JUDGMENT

The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**for brevity 'IBC' / 'Code'**), by **Aviagen India Poultry Breeding Company Pvt. Ltd.** through its Director Mr. Paul Gittins (**for brevity 'Operational Creditor' / 'Petitioner'**), with a prayer to initiate

Corporate Insolvency Resolution Process (**CIRP**) in case of M/s Redhu Farms Private Limited (**for brevity 'Corporate Debtor' / 'Respondent'**).

2. The Corporate Debtor, namely, M/s Redhu Farms Private Limited, is a Company incorporated on 17.05.2002 under the provisions of Companies Act, 1956 with CIN No. U01122HR2002PTC034897 with its registered office at Assandh Road, Village and PO Alewa, Jind, Haryana-126102. Hence, the territorial jurisdiction lies with this Adjudicating Authority. Copy of master data of corporate debtor is attached with the main petition and marked as Annexure 2.

3. The facts of the case, briefly, as stated in the petition are that operational creditor is engaged in the business of poultry breeding and supplies of day old grand parent and parent stock chick to customer around the globe. In 2018, corporate debtor approached operational creditor for supply of poultry products and various invoices were raised for the supply. Upon delivery of goods the operational creditor would receive an acknowledgement vide signature on consignments delivery challan. There are nine invoices pending for sum of Rs. 1,98,41,810/- (Rupees One Crore Ninety Eight Lakhs Forty One Thousand Eight Hundred Ten only). Despite the several reminders through email dated 31.01.2020 and through letter dated 04.12.2020, the corporate debtor failed to make the payment.

4. It is submitted by the petitioner in Form 5, Part IV that amount claimed to be in default is Rs.1,98,41,810/- (Rupees One Crore Ninety Eight Lakhs Fourty One Thousand Eight Hundred Ten only). The default occurred on 14.11.2018 i.e when first invoice was raised upon the Corporate Debtor. Copy of unpaid invoices (Annexure-4), email dated 31.01.2020

(Annexure-5), Letter dated 04.12.2020 (Annexure-6), email dated 31.12.2020 and 04.01.2021(Annexure-8), computation of amount (Annexure-9), certificate in Form 5A from SBI Bank maintained by Company for receipt of payments (Annexure-10), Ledger (Annexure-11) are attached with the main petition.

5. A demand notice dated 23.12.2020 in Form 3 is stated to be issued by the operational creditor on 31.12.2020 and the same has been delivered to the corporate debtor vide registered post as the tracking report and postal receipts are attached at Annexure 7 of the petition. The corporate debtor replied to demand notice through email dated 31.12.2020 wherein it is stated that there is no need to go through legal channels to recover the dues and they have all the intentions to pay every penny they owe. During the lockdown stock was destroyed due to which there was huge gap in production. thereafter, new production was destroyed by viral disease. The payments would be made from january end and all dues will be cleared. The operational creditor vide its email dated 04.01.2021 stated that no payments were received and were prepared to accept the post-dated cheques beginning January 2021, not less than Rs 1 million per cheque per month. Further, in case corporate debtor agrees then the legal proceedings will be postponed.

6. The notice of this petition has been issued to the corporate debtor to show cause as to why this petition be not admitted. The affidavit of service was filed by Diary No. 00575/1 dated 03.08.2021. The corporate debtor has filed reply vide diary No.00575/2 dated 01.06.2022, wherein it is stated that the total amount claimed of Rs. 2,66,61,957/- (Rupees Two

Crores Sixty Six Lakhs Sixty One Thousand Nine Hundred Fifty Seven Only) as on 30.12.2020 is not a legal operational debt. The Operational Creditor has not provided the details of the bills raised which have been duly received and paid by Corporate Debtor. The bills raised have already been paid. The Corporate Debtor by email dated 31.12.2020 assured Operational Creditor that it had every intention to pay every penny which it owes. however, due to the lockdown the market crashed and Corporate Debtor had to destroy all the stocks of chicks during the lockdown period which cause huge losses to the Corporate Debtor. Thereby, followed by the bird flu. The Corporate Debtor had good intention to clear the legal dues. Hence, there is requirement of reconciliation of accounts. Once the payment of alleged invoice dated 14.11.2018, 17.11.2018 and 20.11.2018 was not made by the Corporate Debtor then there was no point in issuing other invoices dated 02.01.2019, 04.01.2019, 07.01.2019, 09.01.2019 and 11.01.2019. Further, the operational creditor waited for more than one year to remind the corporate debtor to clear the amount dues. The statement in Form 5A from State Bank of India requires to be reconcile and authenticated by some experts. There is no proof of service regarding service of the present application.

7. The rejoinder was filed vide Diary No.00575/3 dated 23.08.2022, wherein it is stated that the delivery challans in respect of delivery ordered live stock was duly acknowledged on behalf of corporate debtor. Vide email dated 31.12.2020 the corporate debtor confirmed that it has intention to pay every penny that corporate debtor owes to operational creditor. The corporate debtor has further admitted issuance of invoices dated 14.11.2018,

17.11.2018, 20.11.2018, 02.01.2019, 04.01.2019, 07.01.2019, 09.01.2019 and 11.01.2019.

8. The short written submissions have been filed by petitioner vide Diary No.00575/5 dated 30.01.2023 and was refiled on 10.02.2023 and by respondent/corporate debtor vide diary No.00575/4 dated 25.11.2022.

9. We have heard the learned counsel for the petitioner as well as corporate debtor and have perused the records.

10. The first issue for consideration is whether the demand notice notice dated 23.12.2020 in Form 3 is stated to be issued by the operational creditor on 31.12.2020 and the same has been delivered to the corporate debtor vide registered post as the tracking report and postal receipts are attached at Annexure 7 of the petition. The corporate debtor replied to demand notice through email dated 31.12.2020 wherein it is stated that there is no need to go through legal channels to recover the dues and they have all the intentions to pay every penny they owe. During the lockdown stock was destroyed due to which there was huge gap in production. thereafter, new production was destroyed by viral disease. The payments would be made from january end and all dues will be cleared. The operational creditor vide its email dated 04.01.2021 stated that no payments were received and were prepared to accept the post-dated cheques beginning January 2021, not less than Rs 1 million per cheque per month. Further, in case corporate debtor agrees then the legal proceedings will be postponed. Therefore, demand notice was duly served upon the corporate debtor.

11. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. It is deposed by way of an affidavit by

the learned counsel for the petitioner that there is no notice of existing the unpaid operational debt in terms of Section 9(3)(b) of the Code. Further, the corporate debtor has admitted its liability vide reply to the demand notice through email dated 31.12.2020 wherein it is stated that there is no need to go through legal channels to recover the dues and they have all the intentions to pay every penny they owe. It is stated in the reply to the petition that the Corporate Debtor had good intention to clear the legal dues, However, there is requirement of reconciliation of accounts. In these circumstances, it can be safely concluded that there is no pre-existing dispute regarding the claim in hand and this is the case of admitted liability.

12. The other issue for consideration is whether this application is filed within limitation. A demand notice issued dated 23.10.2020 in Form 3 was duly served on the corporate debtor. However, the period of limitation would begin from the date of default i.e.14.11.2018 i.e when first invoice was raised upon the Corporate Debtor. This application was filed vide Diary No. 00575 on 19.04.2021 and was re-filed on 19.05.2021. Therefore, this Adjudicating Authority finds that this application is filed within limitation.

13. We have gone through the contents of the application filed in the Form 5 and find the same to be complete. As discussed above, there is a total unpaid operational debt (in default) of Rs.1,98,41,810/- (Rupees One Crore Ninety Eight Lakhs Fourty One Thousand Eight Hundred Ten only) is still pending which amounts to default, when the corporate debtor avoided the payment of outstanding amount despite repeated reminders by the petitioner-operational creditor. Copy of unpaid invoices (Annexure-4), email dated 31.01.2020 (Annexure-5), Letter dated 04.12.2020 (Annexure-6),

email dated 31.12.2020 and 04.01.2021(Annexure-8), computation of amount (Annexure-9), a certificate in Form 5A from SBI Bank maintained by Company for receipt of payments (Annexure-10), Ledger (Annexure-11) are attached with the main petition. Accordingly, the petitioner proved the debt and the default, which is more than Rupees one crore.

14. However, Corporate Debtor has failed to payback the aforesaid amount due as mentioned in the statutory notice till date. Thus, the conditions under Section 9 of the Code stand satisfied. It is evident that from the aforesaid discussed facts that the liability of the corporate debtor is undisputed. Accordingly, the petitioner proved the debt and the default, which is above threshold limit.

15. In the present petition all the aforesaid requirements have been satisfied. It is seen that the petition preferred by the petitioner is complete in all respects. The material on record clearly goes to show that the respondent committed default in payment of the claimed operational debt even after demand made by the petitioner. In view of the satisfaction of the conditions provided for in Section 9(5)(i) of the Code, we admit the petition for initiation of the CIR Process in the case of the Corporate Debtor, **M/s Redhu Farms Private Limited** and also direct moratorium to take effect and appoint Interim Resolution Professional as below.

16. In Part-III of Form No. 5, no Interim Resolution Professional (IRP) has been proposed by the petitioner. The Law Research Associate of this Tribunal has checked the credentials of Mr. Prashant Gupta and there is nothing adverse against him. In view of the above, from the list provided by Insolvency and Bankruptcy Board of India, panel valid from January 01,

2023 to June 30, 2023, we appoint Mr.Prashant Gupta, Registration No. IBBI/IPA-001/IP-P02471/2021-2022/13868 , E-mail: pgupta.rp@gmail.com, Mobile No. +91-9815993315, the Interim Resolution Professional with the following directions:-

i.) The term of appointment of Mr. Prashant Gupta shall be in accordance with the provisions of Section 16(5) of the Code; subject to his written consent to be filed within 7 days of this order;

ii.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of the inventory of assets of the Corporate Debtor;

iii.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of

Conduct governing his profession and as an Insolvency Professional with high standards of ethics and moral;

iv.) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;

v.) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;

vi.) The Suspended Board Of Directors is directed to give complete access to the Books of Accounts of the corporate debtor maintained under section 128 of the Companies Act. In case the books are maintained in the electronic mode, the Suspended Board of Directors are to share with the Resolution Professional all the information regarding Maintaining the Backup and regarding Service Provider kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the Service Provider and its location, and also address of the location of the Books of Accounts maintained in the cloud. In case accounting software for maintaining the books of accounts is used by the corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate Affairs. The statutory auditor is directed to share with the Resolution Professional the audit documentation and the audit trails, which they are mandated to retain pursuant to SA-230 (Audit Documentation) prescribed by the Auditing and Assurance Standards Board ICAI. The IRP/Resolution Professional is directed to take possession of the Books of Account in physical form or the computer systems storing the electronic records at the earliest. In case of any non-cooperation by the Suspended Board of Directors or the statutory auditors, he may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing this order for retrieval of relevant information from the systems of the corporate debtor, the IRP/RP may take the assistance of Digital Forensic Experts empanelled with this Bench for this purpose. The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government portals, for various compliances. The Interim Resolution Professional is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.

vii.) The Resolution Professional is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with request for information/documents available with those authorities/institutions/others pertaining to the corporate debtor which would be relevant in the CIR proceedings. The Government Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the Resolution Professional to enable him to conduct the CIR Proceedings as per law.

viii.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days of filing the report of constitution of the Committee; and

ix.) The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every fortnight.

17. We declare the moratorium in terms of sub-section (1) of Section 14 of the Code, as under:-

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 the possession of the corporate debtor.

18. It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, if any, shall not be terminated or suspended or interrupted during moratorium period. The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.

19. The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31

or passes an order for liquidation of corporate debtor under Section 33 as the case may be.

20. The petitioner is directed to deposit an amount of ₹1,00,000/- (Rupees One lakh Only) with the Interim Resolution Professional to meet the immediate expenses of the CIRP within two weeks. The same shall be fully accountable by Interim Resolution Professional and shall be reimbursed by the Committee of Creditors (CoC) to the petitioner to be recovered as the CIRP cost.

21. A copy of this order be communicated to both the parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his email address forthwith.

22. This petition is accordingly admitted.

-Sd-
(Subrata Kumar Dash)
Member (Technical)

-Sd-
(Harnam Singh Thakur)
Member (Judicial)

March 30, 2023
SM/TB