NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

KOLKATA

CP(IB) No. 835/KB/2018

In the matter of:

M/s. Poddar Business Pvt. Ltd.

..Operational Creditor

Versus

M/s. Basukinath Agro Pvt. Ltd.

.. Corporate Debtor

Coram: Shri Jinan K.R., Member(Judicial)

Shri Harish Chander Suri, Member(Technical)

For the Operational Creditor:

1. Mr. Anil Choudhury, Advocate

Date of Pronouncement of the Order :

ORDER

Per Shri Jinan KR, Member(Judicial)

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1. M/s. Poddar Business Pvt. Ltd. / Operational Creditor, filed this application under Section 9 of the Insolvency & Bankruptcy Code, 2016, read with Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution process (in short CIRP) as against M/s. Basukinath Agro Pvt. Ltd. /Corporate Debtor, on the allegation that the Corporate Debtor committed default in making payment of unpaid operational debt to the tune of Rs.48,76,286/- (Rupees forty eight Lakh seventy six thousand two hundred eighty six only).

2. The relevant facts for deciding the issues, are the following:

The Operational Creditor sold and delivered 3335 bags of Soya Deoiled Cake (Doc) to the Corporate Debtor and the said goods were received by the Corporate Debtor as per the tax invoices dated 05-05-2017, 13-05-2017 and 21-09-2017, to the tune of Rs. 37,08,414/-(Rupees thirty seven Lakh eight thousand four hundred fourteen only). The Operational Creditor further contends that the Corporate Debtor is liable to pay interest @ 18% per annum from 01-11-2017 to 15-05-2018 and therefore, a total unpaid operational debt, due from the Corporate Debtor, is Rs.14,66,859/- (Rupees Fourteen Lakh sixty six thousand eight hundred fifty nine only). Despite the demand, the Corporate Debtor did not pay the amount due to the Operational Creditor. Therefore, the Operational Creditor issued a demand notice dated 04-04-2018, as per Section 8 of the Insolvency & Bankruptcy Code, 2016, to the registered Office of the Corporate Debtor, which was unserved and returned to the Operational Creditor for the reason 'no such company is in the given

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address'. Accordingly, the Operational Creditor repeated the demand notice to the regular place of business of the Corporate Debtor, which was duly received by the Corporate Debtor on 01-04-2018 and even after receipt of the demand notice, the Corporate Debtor did not send a reply nor paid the amount and accordingly, the Operational Creditor filed this Application for initiating the CIRP process as against the Corporate Debtor.

3. To substantiate the above-said contention, the Applicant has produced the following Annexures :

Sl. No.	Particulars
1.	Annexure G : Copy of tax Invoice No. 384/17-18 dated 05.05.2017, Invoice no. 497/17-18 dated 13.05.2017 and Invoice No. 1875/17-18 dated 21-09-2017
2.	Annexure H : Copy of Ledger Account from 01.04.2017 to 11.10.2017 of the Corporate Debtor maintained with the Operational Creditor
3.	Annexure I : Copy of Delivery Challan/Acknowledgement Slip
4.	Annexure J :

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	Copy of GSTR Form-3B
5.	Annexure K : Copy of Annexure "B" Part-III of Form 14E of VAT Return along with the sales report for the period from 01.04.2017 to 31.03.2018.
6.	Annexure L : Copy of demand notice dated 04.04.2018 under section 8 of the IBC sent to the Corporate Debtor along with the postal receipt and tracking report.

4. On the strength of the above said documents, the Operational Creditor prays for admitting the Application under Section 9 of the Insolvency & Bankruptcy Code, 2016.

5. Despite receipt of the notice by the Corporate Debtor and its appearance through Counsel, Mr. Shaunak Mitra, the Corporate Debtor did not defend the case by filing reply affidavit and when this Application was taken up for hearing, nobody turned up on the side of the Corporate Debtor. Therefore, the Ld. Counsel for the Operational Creditor was heard.

6. The Operational Creditor, is a Dealer of Soya Deoiled Cake. The Operational Creditor contends that as per the invoices, Annexure 'G', the Operational Creditor supplied goods worth Rs.37,08,414/- and

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since the Corporate Debtor failed in paying the above said amount due, as per the invoices, the Operational Creditor demanded the said amount with 18% interest per annum, which would come to Rs. 14,66,859/-. The Annexure 'G' adds strength to the submission on behalf of the Operational Creditor that the goods as referred to in the invoices were delivered to the Corporate Debtor as alleged by the Operational Creditor and the delivery of the goods, as per Annexure 'G' invoices, seen further supported by Annexure – I, copy of delivery challan/acknowledgement slip and copy of GSTR Form – 3B, Annexure-'J'. Being satisfied that the Operational Creditor delivered the goods, as referred to the invoices, the Corporate Debtor is liable to pay the above said amount in demand. Nothing is forthcoming to prove that the Corporate Debtor has paid the amount in demand. The copy of ledger account from 01.04.2017 to 11.10.2017 of the Corporate Debtor, maintained with the Operational Creditor (Annexure-H) proves the contention on the side of the Operational Creditor that the amount demanded as operational debt has not been paid by the Corporate Debtor.

The Operational Creditor issued demand notice. The demand notice seen delivered on the Corporate Debtor as per track consignment dated 11.04.2018. Despite delivery of notice, as per Section 8 of the IBC, the Corporate Debtor neither sent a reply raising any dispute nor disputed its liability. To add strength to the contention that the Operational Creditor has not raised any dispute, despite receipt of the demand notice, the Operational Creditor has produced an affidavit in compliance of Section 9(3)(b) of the Code.

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It proves that there is no notice given by the Corporate Debtor relating to a dispute of the unpaid operational debt. Though no statement of Bank Account to prove that the operational debt has not been paid, as demanded by the Operational Creditor, a copy of the ledger extract, maintained by the Corporate Debtor, adds strength to the contention on the side of the Operational Creditor that the Corporate Debtor has not paid the unpaid operational debt, as demanded by the Operational Creditor. Therefore, the requirements to be met out under section 9(3)(b) and (c) also seen satisfied in the case in hand. So also, the Operational Creditor has proved issuance of demand notice as per section 8 along with copies of invoices demanding payment. However, the Corporate Debtor failed to pay the outstanding operational debt found due to the Operational Creditor. The Operational Creditor did not propose the name of the Resolution Professional. Therefore, compliance of section 9(5)(i)(e) doesn't arise for consideration.

7. Keeping in view of the above mentioned facts and circumstances, we are satisfied that the Application filed by the Operational Creditor deserves to be admitted under section 9 of the Insolvency & Bankruptcy Code, 2016. Accordingly, the Application CP(IB) No. 835/KB/2018, is admitted upon the following among:-

ORDERS

i) The application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code,

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2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, M/s. Basukinath Agro Pvt. Ltd., is hereby admitted.

ii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15.

iii) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:-

a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, 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 Financial Assets

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and Enforcement of Security Interest Act, 2002 (54 of 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.

iv) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during moratorium period.

v) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

vi) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.

vii) 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 the 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.

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viii) **Mr. Parag Chakrabarti, an Insolvency Professional, registered with IBBI, having registration number IBBI/IPA-001/IP-P01194/2018-2019/11919, E-mail ID :parag.chakrabarti@gmail.com, Mobile No. 9830622871**, is hereby appointed as Interim Resolution Professional by this Tribunal for ascertaining the particulars of creditors and convening a meeting of Committee of Creditors for evolving a resolution plan.

ix) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within 105 days from the insolvency commencement date and follow Regulation 40A strictly.

x) The Operational Creditor is directed to deposit Rs.2,00,000/- (Rupees Two Lacs Only) in the ESCROW Account in SBI to be operated through the Registrar, NCLT, Kolkata Bench, for the purpose of meeting the preliminary expenses for initiating the CIR Process by the IRP within one week of the date of this order.

xi) Registry is hereby directed under section 7 (4) of the I & B Code, 2016 to communicate the order to the Financial Creditor, the Corporate Debtor and to the I.R.P. by Speed Post as well as through E-mail.

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xii) List the matter on 28-11-2019 for filing of the progress report.

8. The free copy/certified copy of the Order may be issued to all the concerned Parties, if applied for, upon compliance with all requisite formalities.

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(Harish Chander Suri) **(Jinan K.R.)**

Member(Technical) **Member(Judicial)**

Signed on this, the 5th day of November, 2019

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