IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

ITEM No.16
CP (IB) No. 88/BB/2022

IN THE MATTER OF:

M/s. Pratishtha Commercial Pvt Ltd ... Petitioner
Vs.
M/s. Kavi Protein and Feed Pvt Ltd ... Respondent

Order under Section 9 of Insolvency & Bankruptcy Code, 2016

Order delivered on 24.01.2023

CORAM:
TMT. T.KRISHNAVALLI
HON'BLE MEMBER (JUDICIAL)

SH. MANOJ KUMAR DUBEY
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Petitioner : Sh. Shrikar.A.J
For the Respondent : Sh. Shanthappa.D.G

ORDER

1. The present petition is filed on 05.04.2022, under section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC'/Code), R/w. Rule 6 of the I&B (Application to Adjudicating Authority) Rules 2016, by M/s. Pratishtha Commercial Private Limited (for brevity 'Operational Creditor/Petitioner') *inter-alia* seeking to initiate Corporate Insolvency Resolution Process in respect of M/s. Kavi Protein and Feeds Private Limited (hereinafter referred as 'Corporate Debtor/Respondent). The contents of the Application are supported by the affidavit dated 28.03.2022 filed by Mr. Jay Prakash Poddar, acting as a Director of the Petitioner is at Page No. 31 of the Petition.

2. The Corporate Debtor namely M/s. Kavi Protein and Feeds Private Limited incorporated on 19.02.2010 with CIN: U52203KA2010PTC052591 having its registered office situated at No.26 Sindhi Colony, Second Floor, 1st Cross, J.C Road Bangalore – 560 002, which falls within the territorial jurisdiction of this Adjudicating Authority. The Authorised share capital of the company is Rs.2,00,00,000/- and paid up share capital is Rs.2,00,00,000/- as per the

Company Master Data attached at Annexure-II of this Petition.

3. The present application has been filed by the Operational Creditor against the Corporate Debtor in respect of the default amount of Rs.3,89,59,601/- (Rupees Three Crore Eighty Nine Lakhs Fifty Nine Thousand Six Hundred and One only).

4. It is stated that the Operational Creditor is in the business of trading of raw materials used for manufacturing cattle feeds and the Corporate Debtor is in the business of sale and supply of Soya Doc, Rape Seed extraction and other raw materials. Further, the Corporate Debtor had approached the Operational Creditor, for purchase of Soya Doc, RSE and such other Raw Materials (hereinafter referred to as 'Goods') vide various Purchase Orders as mentioned in the Petition. In pursuant to the Purchase Order the Operational Creditor had supplied the Goods as per specifications of the Corporate Debtor and raised several invoices against the same and all the Invoices were received by Corporate Debtor without raising any dispute at any time thereafter. The aggregate amount covered under the invoices is Rs.2,85,07,487/-.

5. Subsequently, the Operational Creditor has given rebate of a sum of Rs.53,923/- on Rs.2,85,07,487/-, wherein the balance payable by the Respondent was Rs.2,84,53,564/-. Thereafter, the Corporate Debtor have made part payment of a sum of Rs.3,25,664/-. Further, as per the terms and conditions of Sale Invoice, the Operational Creditor has calculated interest on the outstanding Principal amount at the rate of 24% P.A calculated up to 28.01.2022 and such amount aggregates to a sum of Rs.1,08,31,701/- and accordingly, the Operational Creditor has raised Debit Note bearing No. 11544 dated 28.01.2022 for a sum of Rs.1,08,31,701/- being interest up to 28.01.2022 and sent it to Corporate Debtor.

6. It is further stated that the Operational Creditor made several requests and reminders to the Corporate Debtor for the payment of outstanding dues, but the Corporate Debtor has failed and neglected to make payment. Moreover,

the Corporate Debtor while admitting the debt, in partial discharge of debt issued 8 cheques totaling to Rs.3,75,00,000/-, but the same cheques were dishonored for the reason "Account Blocked".

7. The Operational Creditor issued Demand Notice in Form-3 U/s. 8 of IBC, 2016 to the Corporate Debtor demanding a sum of Rs.3,89,59,601/- and the same was received by the Corporate Debtor on 21.02.2022 and no notice of dispute or payment is received by the Operational Creditor.

8. In response to the instant Petition, the Corporate Debtor has filed Objection *inter-alia* contending as follows:

   1) It is submitted that the sometime the quality of the raw materials are not up to specific standards as prescribed and orally requested to the Operational Creditor to provide the specific raw materials with good standards in order to maintain good business. Hence, the invoice received by the Corporate Debtor without raising any dispute if far from truth.
   2) It is also submitted that the Corporate Debtor has made part payment of Rs.3,25,664/- and the balance amount due as per the various invoices issued by Operational Creditor is to an extend of Rs.2,81,27,900/-, but the interest rate charged by the Operational Creditor at the rate of 24% p.a on the outstanding due is very high and against the business principle and law.
   3) On 07.02.2022, the eight cheques issued by the Corporate Debtor to the Operational Creditor for a sum of Rs.3,75,00,000/- is as a Security at the compulsion and request of the Operational Creditor, but the same were presented without prior intimation to the Corporate Debtor on the same day by taking undue advantage in the name of Security.
   4) It is further submitted that poultry business activities suffered due to the adverse effect of COVID Pandemic situation in the whole economy during the F.Y 2021 and 2022 and the delay in payment to the Operational Creditor by the Corporate Debtor does not have any malafide intention.

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Therefore, prays this Tribunal to provide the reasonable period of time to make payment of Rs.2,81,27,900/- in instalments and to waive off the interest amount Rs.1,08,31,701/- only interest rate at 24% p.a.

9. We have heard the learned Counsel for the Petitioner and learned Counsel for the Respondent and have also perused the records carefully.

10. The first issue for consideration is whether the Demand Notice in Form 3 was served. It is observed that the Demand Notice dated 17.02.2022 was served on the Corporate Debtor on 21.02.2022 and in response to the same, the Operational Creditor did not receive any notice of dispute or payment.

11. The other issue for consideration is whether present application is filed within limitation. The date of default of the debt is well within the 3 years period from the date of filing of the C.P., as discussed above. Therefore, the Petition has been filed within the period of limitation.

12. The Corporate Debtor in its objections filed on 02.08.2022, admitted the debt and prayed to waive of the interest amount and submits that due to its financial difficulties they have failed to pay the debt to the Operational Creditor.

13. In the given facts and circumstances, the present petition being complete and having established that the default in payment of the Operational Debt for the default amount of above Rs.1,00,00,000/-, the petition is **admitted** and moratorium is declared in terms of Section 14 of the Code. As a necessary consequence of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:

i. The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in
ii. any court of law, tribunal, arbitration panel or other authority;
iii. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

iv. 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 and Enforcement of Security Interest Act, 2002;

v. The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Corporate Debtor;

vi. It is further directed that the supply of essential goods or services to the Corporate Debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period;

vii. 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 financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor;

viii. 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 passed an order for liquidation of Corporate Debtor under Section 33 as the case may be;

14.Since the Petitioner has not suggested any IRP and left the matter to this Adjudicating Authority to appoint suitable IRP, we are inclined to appoint **Ms. Pavitra Vyas,** Insolvency Professional, bearing Registration No. **IBBI/IPA-002/IP-N01144/2021-2022/13844** having registered address at CCB 52, 3rd Floor, Opp. Shivaji Garden, Dr. SPM Road, Khade Bazar, Shahapur, Belagavi – 590 003, Contact No. 9449191848 and e-mail: cspavitravyas@gmail.com, appearing at **Sl. No. 15** of the panel of the IPs for appointment as IRP or Liquidator, approved for NCLT, Bengaluru Bench by Insolvency and Bankruptcy Board of India from January 1, 2023 to June 30, 2023, is appointed as the Insolvency Resolution Professional.

15.The Law Research Associate of this Tribunal has checked the credentials of Ms. Pavitra Vyas and there is nothing adverse against her. Therefore Ms. Pavitra Vyas appointed as the Insolvency Resolution Professional of the Corporate Debtor. She shall file his written consent within one week from the date of the receipt of this order. The IRP is directed to take the steps as mandated under the IBC, under Sections 15, 17, 18, 20 and 21 of IBC, 2016.

16.The Operational Creditor shall deposits a sum of Rs.2,00,000/- (Rupees Two Lakhs 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.

17. The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the financial position of the Corporate Debtor, constitute the Committee of Creditors and shall file a report, certifying constitution of the Committee to this Adjudicating Authority on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the CoC within seven days for filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Adjudicating Authority every fortnight.

18. A copy of the order shall 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 e-mail address forthwith.

Sd/-

(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

Sd/-

(T.KRISHNAVALLI)
MEMBER (JUDICIAL)

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