

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH AT AHMEDABAD
COURT 1

TP/MP/ 21 of 2019 [CP(IB) 512 of 2019]

Coram: MADAN B. GOSAVI, MEMBER (JUDICIAL)
VIRENDRA KUMAR GUPTA, MEMBER (TECHNICAL)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING THROUGH VIDEO CONFERENCING BEFORE THE
INDORE BENCH AT AHMEDABAD OF THE NATIONAL COMPANY LAW TRIBUNAL ON 04.12.2020

Name of the Company:

Harra Polypack
V/s
Soubhagyalaxmi Foods Pvt Ltd

Section:

9 of the Insolvency and Bankruptcy Code

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open court vide separate sheet.

(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)

(MADAN B GOSAVI)
MEMBER (JUDICIAL)

Dated this the 4th day of December, 2020.



**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH AT AHMEDABAD
COURT 1**

CP (IB) No.512/9/NCLT/INDORE/2019

An application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016

In the matter of :

M/s. Harra Polypack
767/6, Opp. Tata Housing,
Nr. Riddhi Plastic, Vadasar,
Kalol, Gandhinagar
Gujarat

..Operational Creditor

Versus

**M/s. Soubhagyalaxmi Foods Private
Limited**
CIN: US1211MP1995PTC010080
Chhipaner Road Harda,
Harda,
Indore, Madhya Pradesh-461331

..Corporate Debtor

Order reserved on 03.12.2020
Order Pronounced on 4th Day of December, 2020

Coram: MADAN B. GOSAVI, MEMBER(J)
VIRENDRA KUMAR GUPTA, MEMBER (T)

Appearance:

Learned Counsel Mr. Pradeep Tulsian for the Operational Creditor.

Learned Counsel Mr. Rajat Lohia for the Corporate Debtor. *and*

ORDER

[Per VIRENDRA KUMAR GUPTA, MEMBER (T)]

1. The facts, in brief, are that the Operational Creditor supplied goods to the Corporate Debtor during the period starting from December-2016



till October-2017. The Corporate Debtor received the goods. Partial payments were also made by the Corporate Debtor. The Corporate Debtor, however, did not make payment of 7 invoices and also did not provide Form-C resulting into levy of penalty / interest. The Operational Creditor has filed this petition for initiation of CIRP on account of default being made by the Corporate Debtor for non-payment of outstanding amount alongwith interest.

2. Learned Counsel Mr. Pradeep Tulsian on behalf of the Operational Creditor and narrated these facts. Our attention was also drawn to the copy of invoices, statement of account, purchase order etc. in support of its claim. It was also claimed that notice under Section 8 of IB Code, 2016 had duly been served on the Corporate Debtor. It was also claimed that affidavit as required under Section 9(3)(b) of IB Code, 2016 had also been filed wherein it was stated that Corporate Debtor had not given any notice of dispute relating to outstanding amount. It was also submitted that name of IRP has not been proposed as it was not mandatory in case of application filed under Section 9 of IB Code, 2016 and this Adjudicating Authority could appoint the same.



3. Learned Counsel Mr. Rajat Lohia on behalf of Corporate Debtor appeared and raised technical issues as regard to some columns of application remains blank. It was also claimed that there was a dispute between the parties, hence, this petition was liable to be dismissed. However, our query from the bench that whether any dispute had been

raised before receipt of notice from the Operational Creditor under Section 8 of IB Code, 2016, Learned Counsel Mr. Lohia, on behalf of Corporate Debtor, could not give straight answer nor could show any material on record to establish this fact.

4. We have considered the submissions made by both sides and material on record. It is not in dispute that goods have been supplied long back which have been retained by the Corporate Debtor. Part payments have also been made. No cogent material has been brought on record by way of correspondence or otherwise to show that there exists a dispute between the parties prior to receipt of notice under Section 8 of IB Code, 2016. The technical pleas taken by the Corporate Debtor are not of any substance so as to vitiate the proceedings initiated under Section 9 of IB Code, 2016. Affidavit under Section 9(3)(b) of IB Code, 2016 has been filed. Considering over all facts and circumstances of the case, we are of the view that this petition deserves to be admitted as there is outstanding debt due and payable both in fact and in law. The name of IRP has not been proposed as it is not mandatory, hence, we will appoint the same from the list maintained by the IBBI.

5. Thus, this petition is admitted and we order as under:

ORDER

1. Corporate Debtor M/s. Soubhagyalaxmi Foods Private Ltd. is admitted in Corporate Insolvency Resolution Process under Section 9 of the Insolvency and Bankruptcy Code, 2016.



2. The moratorium under Section 14 of Insolvency and Bankruptcy Code, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the Code.

- (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 Securitisation 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 corporate debtor.

3. The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of the Section 31 or passes an order for liquidation of Corporate Debtor Company under Section 33 of the Insolvency & Bankruptcy Code, 2016, as the case may be.



4. We hereby appoint Mr. Mangesh Vitthal Kekre having Registration No. IBBI/IPA-001/IP/P-00539/2017-2018/10964

to act as an IRP under Section 13(1) (c) of the Code. He shall conduct the Corporation Insolvency Resolution Process as per the provision of Insolvency and Bankruptcy Code, 2016 r.w Regulation made thereunder:

5. The IRP shall perform all his functions as contemplated, *inter-alia*, by Sections 17,18,20 & 21 of the Code. It is further made clear that all personnel connected with Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal obligation under Section 19 of the Code extend every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or co-operate with IRP, do not assist or Co-operate, IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.



6. This Adjudicating Authority direct the IRP to make public announcement of initiation of Corporate Insolvency Resolution Process (CIRP) and call for submission of claims under Section 15 as required by Section 13(1) (b) of the Code.

7. It is further directed that the supply of goods/service to the

Corporate Debtor Company, it continuing, shall not be terminated or suspended or interrupted during moratorium period.


8. The IRP shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor Company' and manage the operations of the Corporate Debtor Company as a going concern as a part of obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016. The Operational Creditor is directed to pay an advance of Rs. 50,000/- (Rupees Fifty Thousand Only) to the IRP within two weeks from the date of receipt of this order for the purpose of smooth conduct of Corporate Insolvency Resolution Process (CIRP) and IRP to file proof of receipt of such amount to this Adjudicating Authority alongwith First Progress Report. Subsequently, IRP may raise further demands for Interim funds, which shall be provided as per Rules.

9. The Registry is directed to communicate a copy of this order to the Operational Creditor, Corporate Debtor and to the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on website immediately after pronouncement of the order.



10. Accordingly, CP(IB) No. 512/9/NCLT/2019 is allowed.
11. The matter to be listed on 21.01.2021 for further consideration.


(Virendra Kumar Gupta) Member
(Technical)


(Madan Bhalachandra Gosavi)
Member (Judicial)

Signed on this, the 4th Day of December, 2020.

Prakash



Certified to be True Copy of the Original


Deputy Registrar
NCLT, Ahmedabad Bench
Ahmedabad