IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

C.P. (IB) 552/MB/2019

Under Section 8 & 9 of the IBC, 2016

In the matter of

National Agricultural Co-operative Marketing Federation of India Limited

Sapphire Building, Plot No. 82, 3rd Floor, Office No. 302, S.V. Road, Khar (west), Mumbai- 400052

.... Petitioner

v/s

Umarai Worldwide Private Limited

A/8/10, Groma House, Sector-19, Plot No. 14C, Navi Mumbai, Thane, Maharashtra- 400614

…. Corporate Debtor

Order Delivered on 20.12.2019

Coram: Hon'ble Smt. Suchitra Kanuparthi, Member (Judicial)
Hon'ble Shri V. Nallasenapathy, Member (Technical)

For the Petitioner: Adv. Nikeeta Kodre, Adv. Anjali Patil

For the Corporate Debtor: None Present

Per: Suchitra Kanuparthi, Member (Judicial)

ORDER

1. This Company Petition is filed by National Agricultural Co-operative Marketing Federation of India Limited (hereinafter called "Petitioner") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against Umarai Worldwide Private Limited (hereinafter called "Corporate Debtor") alleging that Corporate Debtor committed default in making payment of ₹2,14,14,560/-by invoking the provisions of Section 8 and 9 of the Insolvency & Bankruptcy Code (hereinafter called "Code") read with Rule 5 and 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The Petition reveals that the Petitioner is the owner of Cold Storage known as NAFED Cold Storage situated at Vashi-Turbhe, Navi Mumbai. The Corporate Debtor being a successful bidder in the tender process conducted by the Petitioner for letting out the Cold Storage Facility on leave and license basis for a period of three

years, approached the Petitioner and accordingly a Leave & License Agreement dated 01.10.2015 was executed between the Petitioner and Corporate Debtor for the period of three years. The agreement provides that the license fee of ₹9,31,000/- is payable on 7th day of every calendar month with an increase of 10% in the monthly license fee on and after expiry of 12 months from the date of signing the Leave & License agreement which is annexed to the Petition in Annexure-A. Apart from the license fee, the Corporate Debtor is liable to pay all the utility bills and charges such as electricity, water bills etc. to the appropriate authorities directly and provide the original payment receipts to NAFED after every billing cycle. Further, as per Clause 1.14 of the said agreement, it was also agreed, in case of default in payment of any monthly license fee, the Corporate Debtor will be liable to pay an interest at the rate of 21% per annum for delayed period (calculated on daily basis) to the Petitioner.

3. The Counsel for the Petitioner submits that the Petitioner raised several invoices against the Corporate Debtor as per the Leave and License agreement. The Corporate Debtor started defaulting in payment of monthly rent from September 2017 onwards and thus, an outstanding amount of ₹2,14,14,560/- (₹2,01,01,070 as per debit note dated 19.11.2018 plus electricity arrears of ₹13,13,490 as per Corporate Debtor's letter dated 01.06.2018) is over due on account of monthly license fee along with interest, electricity and water bills.

4. The Counsel for the Petitioner submits that the Corporate Debtor acknowledged and confirmed the outstanding debt amount through its letters dated 01.06.2017 and 26.02.2018 sent to the Petitioner. Even after several reminders, the Corporate Debtor failed to make any payment. Resultantly, the Petitioner issued eviction notice dated 24.05.2018 upon the Corporate Debtor. Thereafter, the Petitioner issued Demand Notice dated 26.09.2018 in Form 3, under Section 8 of the I&B Code, 2016 to the Corporate Debtor demanding payment of ₹1,83,45,278/- which is due from the month of September, 2017.

5. The Corporate debtor through its reply dated 10.11.2018 to the said demand notice denied all the claims made by the Petitioner and asked for the withdrawal of the demand notice and renewal of the Leave and License Agreement. The Corporate Debtor further objected to the caution notification dated 15.02.2018 pasted on the main and back gate of the premises, which states that the Corporate Debtor is in illegal occupation of the said premises and that the

Leave & License Agreement has been terminated by the notice dated 23.08.2017.

6. The Counsel for the Petitioner submits that the Corporate Debtor also issued several cheques in discharge of the outstanding liabilities towards the Petitioner, but the cheques got dishonored on presentation. Thus, the Petitioner had also initiated the criminal prosecution against the Corporate Debtor under Section 138 of Negotiable Instruments Act, 1881 for one such cheque and same is pending before the concerned court at Mumbai.

7. The Counsel for the Petitioner submits that the Corporate Debtor was served with the Petition and date of hearing was also intimated to him by the Petitioner. Despite the receipt of notice, the Corporate Debtor did not appear for the hearing on 10.10.2019. The Counsel for the Petitioner was heard andthe matter was reserved for orders.

8. The Petitioner has issued several invoices towards the payment of monthly license fee as agreed under the Leave & License Agreement and the same remained unpaid. The Corporate Debtor vide letter dated 26.02.2018 has confirmed to release the outstanding dues for rent of two months and vide earlier letter dated 01.06.2017, the Corporate Debtor confirmed to clear the outstanding dues of rent, electricity and penalties. The Leave and License Agreement executed between the Petitioner and the Corporate Debtor entitles the Petitioner to claim the license fee and other charges from the Corporate Debtor. Therefore, there is a clear debt established by the said agreement and the Corporate Debtor has defaulted in payment of such dues and therefore, the Corporate Debtor is in breach of the contractual obligations under the Leave and License Agreement. Hence, the Petition deserves to be admitted.

9. Mr. Raj Kumar Dad, having office at L-302, Sankeshwar Nagar Society, Ashok Van, Anand Hotel, Dahisar East, Mumbai- 400068, having email address rajkdad@gmail.com, having Registration No. IBBI/IPA-001/IP-P00537/2017-18/10962has given his consent in Form No. 2 to act as an Interim Resolution Professional.

10. This Bench having been satisfied with the application filed by the Operational Creditor which is in compliance of provisions of Section 8 & 9 of the Insolvency & Bankruptcy Code admits this application declaring Moratorium with the directions as mentioned below:

(a) that this bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgement, decree or other in any

court of law; transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein; 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; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

(b) that the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

(c) that the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(d) that the order of moratorium shall have effect from 20.12.2019 till the completion of the CIRP 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.

(e) that the public announcement of the CIRP shall be made immediately as specified under Section 13 of the Code.

(f) that this Bench hereby appoints Mr. Raj Kumar Dad, having office at L-302, Sankeshwar Nagar Society, Ashok Van, Anand Hotel, Dahisar East, Mumbai- 400068, having email address rajkdad@gmail.com, having Registration No. IBBI/IPA-001/IP-P00537/2017-18/10962 as Interim Resolution Professional to carry the functions as mentioned under the Code.

11. The Registry is hereby directed to communicate this order to both the parties and to the Interim Resolution Professional immediately.

SD/-
V. Nallasenapathy
Member (Technical)

SD/-
Suchitra Kanuparthi
Member (Judicial)