

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH-I
KOLKATA**

CP (IB) No. 119/KB/2021

In the matter of:

A petition under section 9 of the Insolvency and Bankruptcy Code, 2016.

In the matter of:

Meher Oil Industries Limited
[CIN: U15326TG2008PLC119325]

...Operational Creditor

Versus

Swastik Oil Refinery Private Limited
[CIN: U15142WB1997PTC084070]

...Corporate Debtor

Order reserved on: 08 February, 2022

Order pronounced on: 15 March, 2022

Coram:

Shri Rajasekhar V.K.	:	Member (Judicial)
Shri Balraj Joshi	:	Member (Technical)

Appearances (through video conferencing):

For the Operational Creditor : Mr. K Phani Kumar, Advocate

For the Corporate Debtor :Ms. Anshumala Bansal, Advocate

ORDER

Rajasekhar V.K., Member (Judicial)

1. This Court convened through video conferencing.
2. This is a Company Petition filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (“Code”) by Meher Oil Industries Limited (“Operational Creditor”), a company incorporated under the provisions of the Companies Act, 1956 and represented by its Managing Director, Mr. Chinta Ramakrishna Reddy, authorised by a

Board Resolution dated 13 April 2020, seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against Swastik Oil Refinery Private Limited (“Corporate Debtor”).

3. The Corporate Debtor is a company limited by shares incorporated on 23.04.1997, having CIN: U15142WB1997PTC084070, under the Companies Act, 1956, with the Registrar of Companies, West Bengal, Kolkata. Its registered office is at H.O.-3, Pretoria Street, Chandra Kunj, 3rd Floor, Kolkata- 700071, within the State of West Bengal. Therefore, this Bench has jurisdiction to deal with this petition.
4. The present petition was filed on 31 August, 2020 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of Rs.65,04,438/- (Rupees Sixty-Five Lakh Four Thousand Four Hundred and Thirty-Eight only) as on 31 March, 2018 plus interest @25% p.a. from 01 April 2018 to 31 July 2020 i.e. Rs.37,94,254/- (Rupees Thirty-Seven Lakh and Ninety Four Thousand and Two Hundred and Fifty-Four only). The total amount due is Rs.1,02,98,692/- (Rupees One Crore Two Lakh Ninety-Eight Thousand Six Hundred and Ninety-Two only) as on 31 July 2020.
5. The learned Counsel for the Operational Creditor states as follows:-
 - a. The Operational Creditor supplied crude Rice Bran Oil to the Corporate Debtor from 28 November 2017 and 07 December 2017 and accordingly invoices numbered 143, 144, 155, 156 and 160 were raised by the Operational Creditor.
 - b. The Corporate Debtor has defaulted in payment of Rs.65,04,438/- (Rupees Sixty-Five Lakh Four Thousand Four Hundred and Thirty-Eight only) as on 31 March, 2018 plus interest @25% p.a. from 01 April 2018 to 31 July 2020 i.e. Rs.37,94,254/- (Rupees Thirty-Seven Lakh and Ninety Four Thousand and Two Hundred and Fifty-Four only). The total

amount due is Rs.1,02,98,692/- (Rupees One Crore Two Lakh Ninety-Eight Thousand Six Hundred and Ninety-Two only) as on 31 July 2020.

c. A demand notice under section 8 of the Code was issued on 12 August 2020, the Corporate Debtor did not reply to the said demand notice.

6. Apart from the aforementioned documents, the Operational Creditor has placed the following documents on record:

a. Copies of ledger account; annexed to the petition and marked as Annexure 12 and Annexure 13 at pages 49 and 50 respectively.

b. Copies of invoices from 28 November 2017 to 07 December 2017; annexed to the petition and marked as Annexure 2 to Annexure 11 at pages 23 to 48.

c. Copy of Bank Statement of the Operational Creditor from 01 November 2017 to 30 November 2017; annexed to the petition and marked as Annexure 15 at pages 52 to 54.

d. Copy of Bank Statement of the Operational Creditor from 01 January 2018 to 31 January 2018; annexed to the petition and marked as Annexure 15 at page 55.

7. The Corporate Debtor filed its reply affidavit on 04 August 2021 wherein it states as follows:

a. The claim in the instant petition suffers from deficiency of the amount of default for the purpose of initiating CIRP under this Code. The principal amount claimed is Rs.65,04,438/- and an exorbitant rate of interest of 25% has been charged.

- b. The Corporate Debtor received the demand notice on 22 August 2020 and the Company Petition was affirmed on 24 August 2020. No opportunity was given to the Corporate Debtor to reply to the Demand Notice. The email that was sent does not disclose the date on which it was sent. The Corporate Debtor replied to the Demand Notice on 09 September 2020 disputing the allegation.
- c. No sum is due or payable by the Corporate Debtor.
- d. There are pre-existing disputes between the Operational Creditor and the Corporate Debtor.
- e. The Operational Creditor approached the Corporate Debtor through one Mr. M. K. Agarwal to supply rice bran oil having FFA of 10%-20% to the Corporate Debtor. Apart from the grade and quality of the crude rice bran oil and price per MT of the crude rice bran oil, no other terms were agreed between the Operational creditor and the Corporate Debtor.
- f. The Operational Creditor supplied three tankers of crude rice bran oil and the same were tested in the laboratory of the Corporate Debtor. The FFA was in line with the agreement but the quality of crude rice oil was not good and the Operational Creditor issued credit notes for Rs.22,201/-, Rs.21,965/- and Rs.17,773/-.
- g. Thereafter, between 28 November, 2017 and 30 November 2017, three tankers of crude rice bran oil were received by the Corporate Debtor under invoice nos. 144, 146 and 143. The crude rice bran oil was tested in the laboratory and it was found that the crude rice bran oil delivered under invoice no. 146 was of FFA 22.81%, hence the said consignment was rejected.

- h. The Corporate Debtor received three tankers of crude rice bran oil under invoice nos. 155, 156 and 160 on 06 December 2017 to 07 December 2017, the laboratory reports reflected that FFA in all the three tankers of crude rice bran oil was above 20% and hence, the entire consignment of crude rice bran oil was rejected.
- i. The Corporate Debtor had requested the Operational Creditor to take back the crude rice bran oil supplied under invoices nos. 146, 155, 156 and 160 but the Operational Creditor refused to do so. The Corporate Debtor discontinued the services of the Operational Creditors and made an ad-hoc payment of Rs.12,24,419/- against the invoice nos. 143 and 144 after adjusting the credit notes issued by the Operational Creditor.
- j. The Corporate Debtor had kept the balance dues on hold due to the disputes between the parties and the damages and loss suffered by the Corporate Debtor. The Operational Creditor settled the payment of Rs.12,24,419/- against the invoice no. 146 even though the Corporate Debtor had rejected the crude rice bran oil that was supplied under invoice no. 146.
- k. The Operational Creditor was aware of the laboratory results of the crude rice bran oil. There was no period of payment or rate of interest for delayed payment agreed on between the parties.
- l. The Operational Creditor has applied for interest only after 31.03.2018 in order to inflate the amount and bring the amount within the pecuniary limits of the Code.
- m. The Ledger filed by the Operational Creditor is an internal document and does not reflect the true and correct position.

8. The Operational Creditor in its reply to the Corporate Debtor has stated that:

- a. The Statement of Account from 01.04.2017 to 31.03.2018 was issued by the Corporate Debtor itself and it is disclosed that there is an outstanding due of Rs.65,04,438/-.
- b. The reply to the demand notice was sent after 18 days from the date of receipt of the same i.e. on 09 September 2020.
- c. The invoice nos. 114,115 and 116 are not the subject matter of the present Company Petition.
- d. The statement of accounts of the Corporate Debtor does not reflect that the invoice nos. 144, 145 and 143 were rejected. Further, all the invoices state that an interest of 25% shall be charged in case of delay in payments.
- e. In the letter dated 09 September 2021, the Corporate Debtor did not mention that the goods sent had been rejected and same has been done in the reply only in order to escape from the liability.
- f. The Respondent has not filed any documents to show that the crude rice bran oil had been rejected or to show that the laboratory reports had been given to the Operational Creditor.

9. The main defences taken by the Corporate Debtor here are that

- i. The invoices in question were returned by the Corporate Debtor;
- ii. There was pre-existing dispute between the Operational Creditor and Corporate Debtor;
- iii. Rate of interest was not agreed between the Operational Creditor and Corporate Debtor;

10. Before entering into the merits of the case, let us have a clear picture as to the invoices raised, credit note issued and invoices disputed.

Invoice No.	Invoice date	Amount	Credit Note	Approved/ Rejected ¹
143	28.11.2017	13,87,781.00	25,911.00 30.11.2017	Accepted
144	28.11.2017	13,72,308.00	25,366.00 30.11.2017	Accepted
155	06.12.2017	13,21,703.25	39,180.25 07.12.2017	Rejected
156	06.12.2017	12,94,445.25	39,069.25 07.12.2017	Rejected
160	07.12.2017	13,00,950.00	40,723.00 08.12.2017	Rejected

11. It is pertinent to note that the Operational Creditor has filed the Company Petition for default in payment of invoice nos. 143, 144, 155, 156 and 160. The Corporate Debtor has mentioned that due to quality of the crude rice bran oil sent in invoice nos. 114, 115 and 115, the Operational Creditor issued credit notes, but on perusal of the records filed by the Operational Creditor, it is seen that the Operational Creditor has given credit notes in all the invoices. Hence, the contention of the Corporate Debtor cannot be accepted because the reason why such credit notes were issued for each invoice has not been explained.

12. Secondly, the Corporate Debtor states that the goods sent under invoice nos. 155, 156 and 160 were not as per the quality and FFA standard as agreed between the Corporate Debtor and the Operational Creditor, hence the same were rejected and the Operational Creditor was requested to take back the crude rice bran oil.

13. Thirdly, comes the contention that no interest component that was agreed upon by the Operational Creditor and the Corporate Debtor and

¹ As per the Corporate Debtor

that the Operational Creditor has calculated the interest in order to raise the pecuniary limit.

14. We are not satisfied with the contentions raised by the Corporate Debtor because all the invoices that have been placed on record clearly reflect under the heading “Terms & conditions” that the “*goods once sold will not be taken back and interest @25% will be charged in over due payments*”, and the invoices were accepted by the Corporate Debtor. If such terms were not agreed to by the Corporate Debtor, it was for the Corporate Debtor to raise the issue at the first instance itself.
15. Further, the Corporate Debtor has not filed any documents to corroborate the claim that the crude rice bran oil was rejected and the Operational Creditor was requested to take back the same.
16. As for the statement of accounts filed by the Operational Creditor which is marked as Annexure 12 to the Petition, is clearly a ledger maintained by the Corporate Debtor and even if it wasn't maintained by the Corporate Debtor, one cannot ignore the signature and seal of the Corporate Debtor in the said document. The last payment made as per the said ledger is 07 December 2017. Thereafter no payments were made by the Corporate Debtor.
17. There is no document on record to show that there is a pre-existing dispute as contented by the Corporate Debtor.
18. It is thus clear that the Operational Creditor had provided services to the Corporate Debtor and the Corporate Debtor has defaulted in payments after 07 December 2017. There is nothing on record to justify that the Corporate Debtor had raised dispute with regard to the crude rice bran oil, other than the laboratory reports, but the same aren't enough to uphold that dispute was raised.

19. In view of the above circumstances, the present petition made by the Operational Creditor is complete in all respect as required by law. The petition establishes that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under section 4(1) of the Code, *i.e.*, Rupees One Crore, at the relevant time.

20. It is, accordingly, hereby ordered as follows:-

- a. The application bearing CP (IB) No. 119/KB/2021 filed by Meher Oil Industries Limited, the Operational Creditor, under section 9 of the Code read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against Swastik Oil Refinery Private Limited, the Corporate Debtor, is **admitted**.
- b. There shall be a moratorium under section 14 of the IBC.
- c. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- d. Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- e. **Mr. Vishal Shekhar**, registration number **IBBI/IPA-002/IP-N00593/2018-19/11891**, email: **vs.vishalshekhar@gmail.com** is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in

terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.

- f. During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow.
- g. The IRP/RP shall submit to this Adjudicating Authority periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
- h. The Operational Creditor shall deposit a sum of Rs.3,00,000/- (Rupees Three Lakh 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 (CoC).
- i. The Court Officer of this Court is hereby directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.
- j. Additionally, the Operational Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West

Bengal, Kolkata by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

21. **CP (IB) No. 119/KB/2021** to come up on **25.04.2022** for filing the periodical report.

22. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

BALRAJ
JOSHI
Digitally signed by
BALRAJ JOSHI
Date: 2022.03.15
16:29:22 +05'30'
Member (Technical)

GGRB(LRA)

Rajasek
har V K
Digitally signed
by Rajasekhar V K
Date: 2022.03.15
17:39:32 +05'30'
Rajasekhar V.K.
Member (Judicial)
15 March, 2022