IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT NO. 5, MUMBAI BENCH

C.P. (IB) 956/MB/2020

Under Section 8 & 9 of the IBC, 2016

In the matter of

Lokvikas Dairy Private Limited & Ors.

At Post Wangi 1, Karmala, Maharashtra- 413202

.... Petitioner

v/s.

Vaishno Devi Food Products Private Limited & Ors.

E-89, 3rd Floor, Padmavati Nagar, Dhankawadi, Pune, Maharashtra- 411043

…. Corporate Debtor

Order Delivered on: 27.10.2020

Coram: Hon'ble Smt. Suchitra Kanuparthi, Member (Judicial)
Hon'ble Shri Chandra Bhan Singh, Member (Technical)

For the Petitioner: Adv. Avinash R. Khanolkar
For the Corporate Debtor: Adv. Manish Malpani

Per: Suchitra Kanuparthi, Member (Judicial)

ORDER

1. This Company Petition is filed by **Lokvikas Dairy Private Limited & Ors.** (hereinafter called "Petitioner") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against **Vaishno Devi Food Products Private Limited & Ors.** (hereinafter called "Corporate Debtor") alleging that Corporate Debtor committed default in making payment of Rs. 1,09,30,427/- including interest at the rate of 12% p.a. 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.

<u>Contentions of the Petitioner:</u>

2. The Counsel for the Petitioner submits that the Petitioner is a Company having business profile of dairy products. The Petitioner used to supply milk to the Corporate Debtor till 18.02.2020 and the Corporate Debtor is liable to pay an amount of Rs. 1,03,35,766/- to the Petitioner.

3. The Counsel for the Petitioner submits that the Corporate Debtor, vide letter dated 05.12.2019, to the Petitioner informed to the Petitioner about issuing two cheques bearing Nos. 217509 & 217510 of Rs. 49,00,000/- and Rs. 49,22,017/- towards the payment of outstanding due of Rs. 98,22,017/-. The said letter is extracted below:

   "Dear Sir,

   We are hereby issued this cheque nos. 217509 of Rs. 49,00,000/- and 217510 of Rs. 49,22,017/- only under protest, the said cheque is not issued for clearing any enforceable liability. The cheque should not be misused."

4. The Corporate Debtor also annexed the ledger account of the Petitioner from period 01.04.2019 to 05.12.2019 maintained in the books of accounts of the Corporate Debtor to the above said letter.

5. The Counsel for the Petitioner then submits that the Corporate Debtor again sent letter to the Petitioner on 18.12.2020, informing the Petitioner about again issuing two cheques. The said letter is extracted below:

   "Dear Sir,

We are hereby issuing cheque nos. 217514 and 217515 of Rs. 49,00,000/- and Rs. 49,22,017/- respectively against supply of milk from your dairy to us."

6. The Counsel for the Petitioner further submits that the above mentioned cheques got dishonored and hence, the Corporate Debtor failed and neglected to pay the amount due to the Petitioner. On account of non-payment of the outstanding dues, the Petitioner issued demand notice dated 21.01.2020 in Form 3 under Section 8 of the I&B Code, 2016 to the Corporate Debtor demanding payment of Rs. 98,22,017/-.

7. Thereafter, the Petitioner and the Corporate Debtor mutually agreed to enter into a Memorandum of Understanding (MoU) on 27.02.2020, as per which, the Petitioner converted the pending dues of the Corporate Debtor into unsecured loan payable by the Corporate Debtor at an interest of 12% p.a. by 20.03.2020.

8. The Counsel for the Petitioner then submits that the Corporate Debtor again defaulted in obligating/ following the terms mentioned in the above said MoU. Hence, the Petitioner, on 10.03.2020, issued an official notice to the Corporate Debtor to clear the dues but the Corporate Debtor again failed to clear the dues. Therefore, the Petitioner finally filed the present Petition.

<u>Contentions of the Corporate Debtor</u>:

9. The Counsel for the Corporate Debtor through its Reply to the Petition submitted that the present Petition is not maintainable and liable to be dismissed because the Petition is based on entirely wrong premise as the alleged claimed debt is not an operational debt.

10. It is then submitted by the Counsel for the Corporate Debtor that the Memorandum of Understanding (MoU) dated 27.02.2020 is not duly stamped and it contains an amount which was never

reconciled during the course of business. Also, the demand notice is incomplete and pertains to the operational debt which is not in compliance with the Code.

11. The Counsel for the Corporate Debtor demands inspection of the present Petition as the copy of the Bank Certificate attached is not clear.

12. During the course of final hearing of the present Petition on 16.10.2020, the Counsel for the Corporate Debtor admitted the full liability of the outstanding amount due to the Petitioner and the matter was reserved for order.

<u>Findings</u>:

13. On the perusal of the above facts, it is clear that the Corporate Debtor has defaulted in paying the outstanding amounts claimed by the Petitioner. The execution of MOU between the parties further reaffirms the obligation of payment of monies by the Corporate Debtor to the Petitioner in view of the contract of supply of milk and outstanding dues thereunder. Hence, there is a clear and admitted debt and default.
14. 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 the date of pronouncement of this order 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. Fanendra Harakchand Munot, having Registration No. IBBI/IPA-001/IP-P00515/2017-18/10916 as an Interim Resolution Professional to carry out the functions as mentioned under the Code.

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

SD/-
Chandra Bhan Singh
Member (Technical)

SD/-
Suchitra Kanuparthi
Member (Judicial)