



BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH

COURT- III

IB-1713/ND/2019

U/S. 9 of the IBC, 2016 and Rule 6 of the
Insolvency and Bankruptcy (Application to
Adjudicating Authority), Rule, 2016

IN THE MATTER OF

GOYAL TEA AGENCIES PRIVATE LIMITED

Registered office at:
2323, Gali Hinga Beg
Tilak Bazar, Khari Baoli,
Delhi – 110006

...Operational Creditor

Versus

M/s SHAKTI BHOG SNACKS LIMITED

Registered Office at:
1102-A, Pearls Business Park,
Netaji Subhash Place
Pitampura, Delhi -110034

...Corporate Debtor

Delivered on: 03.01.2023

Coram:

Shri Bachu Venkat Balaram Das
Hon'ble Member (Judicial)

Dr. Binod Kumar Sinha
Hon'ble Member (Technical)

Appearances:

IB-1713(ND)/2019
D.O.O – 03.01.2023



Operational Creditor : Adv. Sumit Agarwal
Corporate Debtor : Adv. Narendra M Sharma

ORDER

Per: Dr. Binod Kumar Sinha, Member (Technical)

1. The instant application bearing IB-1713/ND/2019 has been filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred as 'IBC, 2016') R/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The Operational Creditors, Goyal Tea Agencies Private Limited is seeking an Order to initiate Corporate Insolvency Resolution Process (hereinafter referred as 'CIRP') against the Corporate Debtor viz., M/s Shakti Bhog Snacks Limited, declare moratorium and appoint Interim Resolution Professional (hereinafter referred as 'IRP'). The Corporate debtor is registered with ROC, NCT of Delhi & Haryana and is therefore, within the jurisdiction of this Adjudicating Authority.

2. The Operational Creditor/Petitioner has averred as follows: -

- a. It is submitted that, Operational Creditor is a wholesale trader and merchant of tea. The Corporate Debtor apart from other food business also deals in tea packaging. Since 16.06.2015, the Corporate Debtor used to purchase tea from Operational Creditor



from time to time as per their requirements with an assurance that they would make payments for the purchases.

- b. It is submitted that, Operational Creditor used to raise tax invoices to the Corporate Debtor for the purchases so made and used to maintain a running ledger account in the name of the Corporate Debtor
- c. It is further submitted that, Corporate Debtor used to acknowledge and confirm the bills. According, to the agreement between the parties, the Corporate Debtor has to clear the bills in 60 days but due to the failure of Corporate Debtor to make payment on time, sometimes the Corporate Debtor sporadically made payments towards the said running accounts and the same is also reflected in the Corporate debtor's ledger account.
- d. It is averred that thereafter, the Corporate Debtor stopped making payments after 21.01.2017 citing financial crunch and kept on protracting further payments of the outstanding invoices.
- e. It is further submitted that the Operational Creditor sent demand notice u/s 8 of IBC to the Corporate Debtor on 07.05.2019. However, the Corporate has deliberately refused to accept the demand notice. Further, the Corporate Debtor has failed to pay the amount in default till date of filing the instant application even after persistent reminders and notices.

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3. Notice was issued by this Adjudicating authority to the Corporate Debtor on 11.01.2021. Corporate debtor has also filed their reply to the captioned petition.

4. We have heard the arguments advanced by Ld. Counsels appearing for Operational creditor as well as for the Corporate debtor and also perused the record.

5. The Operational Creditor's claim is based on the facts that goods amounting to Rs. 35,48,635/- were supplied by the Operational Creditor to the Corporate debtor. The debt is still not paid by the Corporate debtor. It is stated by the Applicant that since the Corporate Debtor did not make the due payment of his Operational debt, applicant had issued Demand Notice dated 07.05.2019 under section 8 of IBC, 2016 at the registered office of the Corporate Debtor. However no response was given by the Corporate debtor to the notice and payments are still due.

6. Per contra, Corporate debtor has raised two contentions:-

I. This instant petition is not maintainable U/s 9 of IB code, as Operational Creditor has failed to specify the 'date' when the purported 'default' occurred in Part – IV.

II. There is a Pre-existing dispute on account of the due payments between the parties.

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7. As regards to the first issue raised by the Corporate debtor it is observed that the Operational Creditor has failed to specify the date when the purported default has occurred. Therefore, at the outset this Adjudicating Authority has to decide as to whether failure on the part of Operational Creditor to mention the date of default in part – IV can be a ground to dismiss petition filed U/s 9 of IB code. In this regard, reference is made to the judgement passed by Hon'ble NCLAT in **MANMOHAN SINGH JAIN VS. STATE BANK OF INDIA (Company Appeal AT/ CH/97/2021)**. The relevant paragraph is reproduced below:-

“52. Further the Learned Counsel for the Appellant relied upon the Judgment of the Hon'ble Supreme Court in Surendra Trading Co. v Juggilalkamlapat Jute Mills Co., 2017 85 taxmann.com 372 SC to show that the timelines under Section 7(5) of the Insolvency and Bankruptcy Code are not mandatory however the defect has still to be removed. As stated above, the Respondent/Financial Creditor/Operational Creditor had stated the date of default in the pleadings and in other documents which the Corporate Debtor has received and acknowledged, therefore as held supra the non-mentioning of the date of default in Part. IV is not fatal to the application and on the sole ground, the application cannot be rejected mere taking a technical impediment as held by the Hon'ble Supreme Court that 'it is only a directory'.

8. In the light of the decision referred to **supra**, even if the Operational Creditor failed to mention date of default in Part – IV in a Section – 9 petition, it cannot be



considered as a valid ground to dismiss the Section – 9 petition as the Corporate Debtor has been made aware of the default through notices and communications as well as the pleadings. The instant Application, therefore, would be still be maintainable.

9. In the present case, the Corporate Debtor has also raised the issue of a pre-existing dispute as its defence. It is stated that some of the Goods supplied by the Applicant from time to time, were found to be either of varied specification, inferior quantity, shortage in quality and the same was brought to the notice of the Applicant either over the phone or during various meetings, owing to the long standing relationship between the parties. In this regard, it is pertinent to note that although the Ld. Counsel had argued that there was pre-existing dispute between the parties, no evidence was rendered to support the contention. While perusing the records also, we found that no evidence is placed on record to establish that there was a pre-existing dispute between the parties.

10. In the light of the averments made by both sides, and on perusal of records, we observe that the claims made by the Operational Creditor towards the goods supplied to the Corporate debtor shall fall within the ambit of the definition of operational debt and the applicant will qualify as an Operational Creditor in terms of section 5(20) of the Code. Further, the averments of the applicant stating that there is a 'debt' which the corporate debtor was liable to pay but

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failed to do so have not been rebutted by the Corporate Debtor by placing any suitable evidence on record. Therefore, this Adjudicating Authority is inclined to admit the Corporate Debtor into CIRP under the provisions of the Code.

11. The Operational Creditor has proposed the name of the IRP, therefore this Adjudicating Authority hereby appoints Mr. Umesh Gupta having Regn. No. IBBI/IPA-001/IP-P00848/2017-2018/11431 (Email ID umesh@vamindia.in) Mob. No. (9910024854) as IRP. Written Consent and IBBI registration certificate of IRP is taken on record. The IRP is directed to place on record valid Authorisation for Assignment (AFA) within 2 (two) days of pronouncement of this Order. The said IRP is directed to take charge of the Respondent Corporate Debtor's management immediately. He is also directed to cause public announcement under section 15 of the IBC, 2016, within three days from date of receiving the copy of this order and call for submissions of claim in the manner as prescribed.

12. The moratorium is declared which shall have effect from the date of this order till the completion of CIRP, for the purposes referred to in section 14 of the IBC, 2016. It is ordered to prohibit all of the following, namely:

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- 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's 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 (54 of 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.
- e. The explanation below section - 14 (1) also stipulates "that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there

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is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period”.

13. The supply of essential goods or services of the Corporate Debtor shall not be terminated, suspended or interrupted during moratorium period. However, the provisions of sub-section (1) of section 14 of IBC, 2016 shall not apply to such transactions, as notified by the Central Government.

14. The IRP shall comply with the provisions of Sections 13(2), 15, 17 and 18 of the code. The Directors of the Corporate Debtor, its promoters or any person associated with the management of the Corporate Debtor shall extend all assistance and cooperation to the IRP as stipulated under section 19 for discharging his function under section 20 of the IBC, 2016.

15. The Operational Creditors are directed to communicate this Order to the IRP and the Corporate Debtor with immediate effect so that the IRP could take charge of the Corporate Debtor’s assets etc., and make compliance with this order as per the provisions of IBC, 2016.

16. Further, the operational creditor shall provide initial finance to the tune of Rs. 2,00,000/- to the aforesaid Interim Resolution Professional within a weeks’

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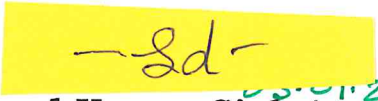


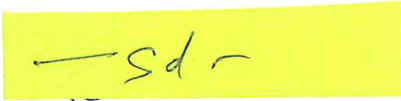
time from the date of this order as advance towards initial cost and expenses of CIRP process. The said advance of Rs. 2,00,000/- shall be adjustable as CIRP cost by the Committee of Creditors immediately after its constitution by the IRP.

17. The Registry is directed to send a copy of this order to the Registrar of Companies concerned for updating the status of Corporate Debtor on the MCA site of Ministry of Corporate Affairs for information of all concerned.

18. The order is pronounced by this Adjudicating Authority in Virtual Hearing.

19. The instant Application bearing IB-1713/ND/2019 stands admitted.


(Binod Kumar Sinha)
Member (Technical)


(Bachu Venkat Balaram Das)
Member (Judicial)