

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(through web-based video conferencing platform)**

CP (IB) No.449/Chd/PB/2019

**Under Section 9 of the Insolvency and
Bankruptcy Code, 2016.**

In the matter of:

Dinesh Kumar Jain,
Proprietor of M/s P.L. Foods,
Registered Address:
Near New Anaj Mandi, Bhawanigarh Road,
Samana, Punjab- 147101
PAN: ABWPJ6749
E-mail: p.l.foods@gmail.com

...Petitioner/Operational Creditor

Versus

Vishal Rice Exports Private Limited
Regd. Address:
Super Market Samana, District Patiala, Punjab- 147101
CIN: U51909PB2008PTC031701
Regd. E-mail: princeisonline.jain@gmail.com
PAN: AACCV6568M

...Respondent/Corporate Debtor

Judgment delivered on: 12.10.2022

**CORAM: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

For the Operational Creditor : Mr. Nahush Jain, Advocate
For the Corporate Debtor : Mr. Ajay Bhagwati, Advocate

PER: HARNAM SINGH THAKUR, MEMBER (JUDICIAL)

JUDGMENT

The instant petition has been filed under Section 9 of the Insolvency and Bankruptcy Code, 2016, (for short hereinafter referred to as the '**Code**') read with Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for short hereinafter referred to as the '**Rules**') by Mr. Dinesh Kumar Jain, Proprietor of M/s P.L. Foods (for short hereinafter referred to as the '**operational CP (IB) No.449/Chd/PB/2019**)

creditor/petitioner') for initiating Corporate Insolvency Resolution Process (for short hereinafter referred to as the '**CIRP**') against Vishal Rice Exports Private Limited (for short hereinafter referred to as the '**corporate debtor/respondent**'). The present petition has been filed in Form 5 as prescribed in Rule 6 (1) of the Rules. The petition is supported by affidavit of Mr. Dinesh Kumar Jain, Proprietor of the operational creditor and the same is at page 10 of the petition.

2. The corporate debtor, namely, Vishal Rice Exports Private Limited, is a company incorporated on 26.02.2008 under the Companies Act, 1956, having CIN U51909PB2008PTC031701 and its registered office is at Super Market, Samana, Punjab. Therefore, the matter falls within the territorial jurisdiction of this Adjudicating Authority. Copy of master data of the corporate debtor is at Annexure 2 of the petition.

3. The brief facts, as stated in the petition, are that the operational creditor, supplied rice to the respondent/corporate debtor on 01.12.2018 and 02.12.2018 and raised invoice No.11 dated 01.12.2018 for an amount of Rs.4,00,064/- and invoice No.12 dated 02.12.2018 for an amount of Rs.3,54,445/-, total amounting to Rs.7,54,509/-. Copies of the invoices have been annexed as Annexure A-4 with the petition.

4. Since, the respondent/corporate debtor failed to make the payment, the operational creditor sent a Demand Notice dated 16.06.2019 in Form 3 (Annexure A-6) by registered post on the registered address of the corporate debtor, calling upon the corporate debtor to repay the unpaid operational debt in full within 10 days from the date of receipt of notice. A perusal of the tracking report annexed with the demand notice shows that the demand notice sent at registered address

of the corporate debtor was delivered. Copy of the tracking report is at Pages 31 of the petition. However, no response to the demand notice is stated to have been received.

5. After filing of the petition, notice was issued to the respondent/corporate debtor on 26.09.2019 to show cause as to why the petition be not admitted. The petitioner/operational creditor filed affidavit of service vide Diary No.6433 dated 19.11.2019, wherein it has been deposed by learned counsel for the petitioner/operational creditor that in compliance of order dated 26.09.2019 notice of the petition was sent to the respondent/corporate debtor through e-mail on 16.11.2019, as provided in the master data of the corporate debtor and the same has not bounced back. Further, it has been stated that on 18.10.2019 notice was also sent at registered address of the corporate debtor as provided in the master data of the corporate debtor and the same was delivered on 22.10.2019. Copy of e-mail, postal receipt and tracking report has been annexed with the said affidavit.

6. When the matter was listed on 25.08.2022, Mr. Ajay Bhagwati, learned counsel appeared on behalf of the respondent/corporate debtor and stated that respondent/corporate debtor is unable to pay the debt and admits its liability. However, this Adjudicating Authority directed the respondent/corporate debtor to file an affidavit to this effect.

7. In compliance of order dated 25.08.2022, the respondent/corporate debtor, vide Diary No.00657/2 dated 30.08.2022, filed an affidavit through Mr. Naresh Kumar Jain, Authorized Signatory, authorized by the respondent/corporate debtor through Board Resolution dated 20.11.2019, copy whereof has been annexed with the affidavit. In the said affidavit, the respondent/corporate debtor

categorically admitted the liability and stated about its inability to repay the debt of the petitioner.

8. We have heard the learned counsel for the petitioner and learned counsel for the respondent and have gone through the records carefully.

9. The first issue for consideration is whether the demand notice dated 16.06.2019 was properly served. As discussed above, the demand notice sent at registered address of the respondent/corporate debtor, as available on the master data of the corporate debtor, was delivered and tracking report showing its delivery has also been annexed with the petition.

10. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. The petitioner/operational creditor has filed an affidavit dated 16.08.2019 (Annexure A-7) under Section 9(3)(b) of the Code, wherein it has been deposed that till the filing of the present petition there is no dispute communicated by the respondent/corporate debtor for the unpaid debt and no payment has been received during this period. Further, it has been deposed that no reply has been received to the demand notice within the stipulated 10 days time from the receipt of demand notice and that there is no pre-existing dispute between the parties at all with regard to the unpaid operational debt.

11. The other issue for consideration is whether this application was filed within limitation. A perusal of the case file shows that the application was filed vide Diary No.4108 dated 16.08.2019, whereas the date of default is 09.12.2018 i.e. 7 days from the date of invoice as per the agreed terms, as is mentioned in Part-IV of

Form 5. Therefore, this Adjudicating Authority finds that this application has been filed within limitation.

12. We have gone through the contents of the application filed in Form 5 and find the same to be complete. As discussed above, there is a total unpaid operational debt of ₹7,54,509/-, as claimed in the petition. As noted above, the operational creditor has provided the details of the debt due and has also annexed with the petition copy of ledger account statement, and invoices. Accordingly, the petitioner/operational creditor has established the debt and the default, which is more than Rupees one lakh i.e. the threshold limit (pre-revised).

13. It is noted that the corporate debtor has failed to make payment of the aforesaid amount due as mentioned in the statutory notice till date. Thus, the conditions under Section 9 of the Code stand satisfied. It is evident from the above-mentioned facts that the liability of the corporate debtor is undisputed and admitted. Also, there is no rebuttal to the claim filed by the petitioner and respondent/corporate debtor through its affidavit admitted its liability towards the petitioner/operational creditor. Accordingly, the petitioner proved the debt and the default which is above threshold limit.

14. In Part-III of Form No. 5, Mr. Vikas Garg, was proposed as Interim Resolution Professional by the petitioner/operational creditor. However, the petitioner/operational creditor preferred an application bearing IA No.1242 of 2022 under Rule 11 of the NCLT Rules, 2016, proposing new name of the Interim Resolution Professional. In the said application, it was stated by the applicant/operational creditor that it came to its knowledge that disciplinary proceedings have been initiated against the proposed Interim Professional and in

consequence of the same, Mr. Vikas Garg has no Authorization of Assignment (AFA) Certificate. Thus, the applicant/operational creditor proposed the name of Mr. Deepankur Sharma, having IBBI Registration No.IBBI/IPA-001/IP-P02236/2020-2021/13419. Form 2 dated 23.09.2022 has also been submitted by the newly proposed IRP and the same has been annexed with the application at Annexure A-3, wherein it has been stated that there are no disciplinary proceedings pending against him with the Board or IIPPI. The said application was allowed by this Adjudicating Authority vide order dated 29.09.2022.

15. In the present petition, all the aforesaid requirements have been satisfied. It is seen that the petition preferred by the petitioner is complete in all respects. The material on record clearly goes to show that the respondent committed default in payment of the claimed operational debt even after demand made by the petitioner. In view of the satisfaction of the conditions provided for in Section 9(5)(i) of the Code, we admit the petition for initiation of the CIRP in the case of the corporate debtor, Vishal Rice Exports Private Limited.

16. We also direct moratorium in terms of sub-section (1) of Section 14 of the Code as under:-

- 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 Securitization and Reconstruction of Operational Assets and Enforcement of Security Interest Act, 2002; and
- 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.

17. It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended or interrupted during moratorium period. The provisions of Section 14(3) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.

18. The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process 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.

19. The Law Research Associate of this Tribunal has checked the credentials of Mr. Deepankur Sharma from the online database provided by the IBBI and there is nothing adverse against him. In view of the above, we appoint Mr. Deepankur Sharma, having Registration No.IBBI/IPA-001/IP-P-02236/2020-2021/13419, E-mail: deepankursharma@yahoo.com, Mobile No.9988115806, as the Interim Resolution Professional with the following directions: -

- i.) The term of appointment of Mr. Deepankur Sharma shall be in accordance with the provisions of Section 16(5) of the Code;
- ii.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the Corporate Debtor;
- iii.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and moral;

- iv.) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;
- v.) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;
- vi.) This Adjudicating Authority directs the ex-management and promoters of the corporate debtor to specifically comply with the provisions of the Sub Regulation (2) of Regulation 4 of the Insolvency Resolution Process for Corporate Persons Regulations, 2016. This Adjudicating Authority further directs that the Interim Resolution Professional should also make all efforts simultaneously to retrieve the required information from the computerized data of the corporate debtor from the systems handed over to the Interim Resolution Professional after initiation of CIRP. For retrieving relevant information, the Interim Resolution Professional may take the help of any digital

forensic companies from the empanelled list available with the Registry of this Adjudicating Authority, if required. This is imperative for meeting the Code's objectives for maximising the value of the assets of the corporate debtor and completing the resolution process in a time-bound manner. The Interim Resolution professional is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP and move an application seeking appropriate remedy, if required.

- vii.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying the constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days of filing the report of constitution of the Committee; and
- viii.) The Interim Resolution Professional is directed to send regular progress report to this Tribunal every fortnight.

20. The petitioner is directed to deposit an amount of ₹50,000/- (Rupees Fifty Thousand Only) with the Interim Resolution Professional to meet the immediate expenses of the CIRP within two weeks. The same shall be fully

accountable by Interim Resolution Professional and shall be reimbursed by the Committee of Creditors (CoC) to the petitioner to be recovered as the CIRP cost.

21. This petition is accordingly allowed and admitted.

A copy of this order be communicated to both the parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send copy of this order to the Interim Resolution Professional at his email address forthwith.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

October 12th, 2022
MK

**THE NATIONAL COMPANY LAW TRIBUNAL
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**Under Section 9 of the Insolvency and
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In the matter of:

Dinesh Kumar Jain,
Proprietor of M/s P.L. Foods,

...Petitioner/Operational Creditor

Versus

Vishal Rice Exports Private Limited

...Respondent/Corporate Debtor

Present through Video Conferencing:-

For the Operational Creditor : Mr. Nahush Jain, Advocate
For the Corporate Debtor : Mr. Ajay Bhagwati, Advocate

Vide separate order of even date, the present petition is admitted.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

October, 12th 2022
MK