

IN THE NATIONAL COMPANY LAW TRIBUNAL**NEW DELHI (COURT NO. IV)****Company Petition No. IB-1651/ND/2018**

(Under Section 9 of the Insolvency and Bankruptcy Code, 2016 Read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

IN THE MATTER OF:**M/S P.K. ENTERPRISES****(Through its proprietor Mr. Pramod Kumar)****...Applicant/Operational Creditor****VERSUS****M/S Four Fresh Retail Private Limited****...Respondent/ Corporate Debtor****Judgment Pronounced on:30.09.2019****CORAM:****DR. DEEPTI MUKESH****HON'BLE MEMBER (Judicial)****SH. HEMANT KUMAR SARANGI****HON'BLE MEMBER (Technical)***IB-1651/ND/2018**M/S P.K. Enterprises Vs M/S Four Fresh Retail Private Limited*

MEMO OF PARTIES

M/S P.K. ENTERPRISES

(Through its proprietor Mr. Pramod Kumar)

Registered office at Mohalla Daligadhi, Post-Purwa

Unnao, U.P.

...Applicant/Operational Creditor

VERSUS

M/S Four Fresh Retail Private Limited

Registered office at Property No. B-9

4 Floor ITL Twin Tower, Netaji Subhash Place

New Delhi -110034

...Respondent/ Corporate Debtor

For the Applicant: Mr. Yash Tandon, Advocate

For the Respondent: Ms. Itisha Gulati, Advocate

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ORDER**Per-Dr. Deepti Mukesh, Member (J)**

1. The Present Application is filed under section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by M/s P.K. Enterprises (for brevity 'Applicant') through its proprietor Mr. Pramod Kumar with a prayer to initiate the Corporate Insolvency process against M/s Four Fresh Retail Private Limited (for brevity 'Corporate Debtor').
2. The Applicant is engaged in sale of food grains like paddy, wheat and other allied items to various rice mills across India and has developed good reputation in the market in relation to timely and quality in supply of goods. The applicant is having its registered office at Mohalla Daligadhi, Post-Purwa, Unnao, U.P.
3. The Corporate Debtor is a private limited company, company limited by shares, incorporated under the provisions of Companies Act, 1956 on 23.04.2008 bearing CIN U52390DL2008PTC177115 and having Authorized Share Capital of the Corporate Debtor is Rs.10,00,00,000/-

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and Paid Up Share Capital is Rs. 2,66,00,000/- as per Master Data of the company. The registered office of the corporate debtor is situated at Property No. B-9, 4 Floor ITL Twin Tower, Netaji Subhash Place, New Delhi-110034.

4. The Applicant has submitted that the food grain namely paddy was sold to the corporate debtor valuing to Rs 36,93,843/- (Thirty-Six Lakh Ninety-Three Thousand Eight Hundred Forty-Three Only) including taxes and advance freight from 06.03.2017 to 10.03.2017 vide various bills/invoices.
5. The Applicant has submitted that out of total amount of Rs 36,93,843/- (Thirty Six Lacs Ninety Three Thousand Eight Hundred And Forty Three), the corporate debtor paid Rs 20,25,000/- (Twenty Lakhs Twenty Five Thousand) till date in various installments and as per the accounts maintained in the normal course of business by the applicant, Rs 16,68,843/- (Rupees Sixteen Lack Sixty-Eight Thousand Eight Hundred Forty-Three) remains outstanding which is due and payable by the corporate debtor.
6. The Applicant has further submitted that the materials were regularly supplied and tax invoices were raised and sent along with Document

9R by the applicant which were duly acknowledged by the corporate debtor. The applicant has asserted that the corporate debtor had also send Form 'C' No. HR06WC4103730 of Haryana Excise and Taxation office, showing that they have received the goods to their satisfaction without any dispute and had acknowledged the same. The copy of Form C and the copy of Document 9R are annexed with the application.

7. It is further submitted by the Applicant that despite various reminders and requests to the corporate debtor to clear the outstanding dues, the corporate debtor had failed in its obligations to clear the outstanding dues since February 2018.
8. The Applicant issued demand notice dated 03.07.2018 under the provisions of Section 8 of the Insolvency and Bankruptcy Code, 2016 as per Form 3 as prescribed under in the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to the Corporate Debtor upon the registered address of the corporate debtor as reflected in the master data. The said notice was sent by Speed Post which was duly delivered on 05.07.2018. The Corporate Debtor has neither raised any dispute through its reply to the aforesaid notice till date nor made any payment towards the outstanding dues.

9. The Applicant filed present Application on 01.11.2018 under section 9 of IBC, 2016 and served the copy of this application which is duly delivered to the Corporate Debtor as per the affidavit of service filed by the applicant.
10. As on date, the Corporate Debtor is liable to pay a sum of Rs.16,68,843/- (Rupees Sixteen Lack Sixty-Eight Thousand Eight Hundred Forty-Three). As per Form 5 under 'Part IV' the breakup of debt which fell due in terms of principal amount is given.

S. No.	Particulars of Operational Debt																
1.	Total amount of debt, details of transactions on account of which debt fell due, and the date from which such debt fell due.	Rs.16,68,843/- (Rupees Sixteen Lack Sixty-Eight Thousand Eight Hundred Forty-Three)															
		<table border="1"> <thead> <tr> <th><u>Bill no.</u></th> <th><u>Invoice date</u></th> <th><u>Interest @ 18% p.a.</u></th> </tr> </thead> <tbody> <tr> <td>73</td> <td>06.03.2017</td> <td>Rs. 7,33,708/-</td> </tr> <tr> <td>77</td> <td>10.03.2017</td> <td>Rs. 7,40,033/-</td> </tr> <tr> <td>78</td> <td>10.03.2017</td> <td>Rs. 7,40,033/-</td> </tr> <tr> <td>79</td> <td>10.03.2017</td> <td>Rs. 7,40,033/-</td> </tr> </tbody> </table>	<u>Bill no.</u>	<u>Invoice date</u>	<u>Interest @ 18% p.a.</u>	73	06.03.2017	Rs. 7,33,708/-	77	10.03.2017	Rs. 7,40,033/-	78	10.03.2017	Rs. 7,40,033/-	79	10.03.2017	Rs. 7,40,033/-
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		80	10.03.2017	Rs. 7,40,033/-
			Total	Rs.36,93,843.18/-
2.	Amount claimed to be in default and the date on which the default occurred	Rs.16,68,843/- (Rupees Sixteen Lack Sixty-Eight Thousand Eight Hundred Forty-Three) Date of default is 05.01.2018.		

11. The Applicant further states that in spite of several opportunities given none appeared on behalf of the corporate debtor nor any reply is filed and the matter was heard exparte.
12. The Applicant has filed its bank statement of Oriental Bank of Commerce from the period 29.03.2017 to 20.01.2018 stating that the amount claimed or any part thereof, has not been received by the applicant nor had any person, on its behalf had received in any manner the amount due to them as required u/s. 9(3)(c) of I &B Code. The Applicant has filed an affidavit under section 9(3)(b) dated 30.10.2018

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affirming that no notice of dispute has been given by the Corporate debtor relating to dispute of the unpaid operational debt.

13. The registered office of corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
14. The default occurred from 05.01.2018, hence the debt is not time barred and the application is filed within the period of limitation.
15. In the given facts and circumstances, the present application is complete and the Applicant is entitled to claim its dues, which remain uncontroverted by the Corporate Debtor, establishing the default in payment of the operational debt beyond doubt. In the light of above facts and records, the present application is admitted, in terms of section 9 (5) of IBC, 2016.
16. Since the Applicant has not named the Insolvency Resolution Professional, this Tribunal based on the list furnished by Insolvency and Bankruptcy Board of India appoints Ms. Arti Baluja, with registration number IIBI/IPA-002/IP-N00780/2018-2019/12378 (email- ca.artibaluja@gmail.com, Mobile No. 9891446721) as the Interim Resolution Professional subject to the condition that no

disciplinary proceedings are pending against such an IRP named who may act as an IRP in relation to the CIRP of the Respondent and specific consent is filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 in relation to specifically the Respondent and the Operational Creditor herein and make disclosures as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016 within a period of one week from the date of this order.

17. We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Ms. Arti Baluja to meet out the expense to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the applicant. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the applicant.
18. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016, moratorium as envisaged under the provisions of

Section 14(1), shall follow in relation to the Corporate debtor, prohibiting as per proviso (a) to (d) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall come in force.

19. A copy of the order shall be communicated to the Applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order be also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

Sd/-

Sd/-

(HEMANT KUMAR SARANGI)
MEMBER (T)

(DR. DEEPTI MUKESH)
MEMBER (J)