THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH
AT NEW DELHI

Company Petition No. (IB)-3127 (PB)/2019

Under Section 9 of the Insolvency and Bankruptcy Code, 2016

In the matter of:

Mr. Prashantha H.M
(Sole Proprietor of M/s Halgappa Trading Company)

Applicant/Operational Creditor

Vs.

Shree Balaji Betel Nuts Private Limited

Respondent/Corporate Debtor

Judgment delivered on: 16.01.2020

Coram:
SH. B.S.V. PRAKASH KUMAR, HON'BLE ACTG. PRESIDENT

SH. S. K. MOHAPATRA, HON'BLE MEMBER (TECHNICAL)

PRESENT :
For the Petitioner: Mr. P.S. Singh, Advocate.

For the Respondent: Mr. Surjan Singh Shekhawat, Advocate.

ORDER

S.K. Mohaparta, Member

1. Mr. Prashantha H.M (Sole Proprietor of M/s Halgappa Trading Company) claiming as the operational creditor has filed this application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rule, 2016 (for brevity 'the Rules') for initiation of Corporate Insolvency Resolution Process in respect of Respondent Company M/s Shree Balaji Betel Nuts Private Limited.

2. The Respondent M/s Shree Balaji Betel Nuts Private Limited Against whom initiation of Corporate Insolvency Resolution Process has been prayed for, is a company incorporated on 15.12.2010 under the provisions of the Companies Act, 1956 having its registered office situated at 208, 2nd Floor, EMCA House, 23/23-B, Ansari Road, Darya Ganj, New Delhi-110002. Since the registered office of the respondent corporate debtor is in

Delhi, this Tribunal having territorial jurisdiction over the place, is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.

3. It is the case of the applicant that respondent Corporate Debtor (Shri Balaji Betal Nuts Private Limited) placed an order for supply of approximately 3.5 lakh kgs of Arecanuts in the month of May, 2016. Pursuant thereof applicant has arranged and supplied 3,64,500 kgs of Arecanuts to the Corporate Debtor during the month of the June, 2016 and raised 25 invoices for each supply. The last invoice was raised on 28th June, 2016.

4. It is submitted that the total amount of Arecanuts supplied to the Corporate Debtor was for Rs. 9,74,37,329/- (Rupees Nine Crore Seventy Four Lakh Thirty Seven Thousand Three Hundred Twenty Nine) and the Corporate Debtor agreed to make the payment immediately/simultaneously on supply of Arecanuts to the Corporate Debtor, therefore as per the

terms, complete payment should have been made by 28th June, 2016.

5. It is further contended that respondent Corporate Debtor made payment of Rs. 1,00,00,000/- (Rupees One Crore) on 27th June, 2016 and then several part payments were made during the year 2017 and 20018. The last payment was made on 9th March, 2018.

6. It is alleged that the Corporate Debtor so far has paid a total sum of Rs. 8,42,99,990/- (Rupees Eight Crore Forty-Two Lakh Ninety-Nine Thousand Nine Hundred) and the unpaid outstanding amount still remains due is Rs. 1,31,37,429/- (Rupees One Crore Thirty-One Lakh Thirty-Seven Thousand Four Hundred Twenty-Nine).

7. In support of its contention applicant has placed on record copy of relevant invoices, Copy of Ledger Account of Corporate Debtor for Financial Year 2016-17 to 2018-19, Copy of audited Financial Statement of applicant for the financial year 2017-18 and the Bank statement of applicant operational creditor from 01.04.2017 to

31.03.2018 including tabular statement showing computation of amounts due and the date of default.

8. Respondent company has filed its reply on 05.12.2019 mainly with the contention that it has already paid Rs. 8,42,99,900/- out of total amount of Rs. 9,74,37,329/- and has requested the applicant to grant some more time to pay the outstanding amount of Rs. 1,31,37,429/- as the corporate debtor is facing financial difficulty. There is an admission in the reply that balance outstanding claimed amount has remained unpaid as on date and the respondent has sought for some more time to pay the outstanding amount.

9. It is pertinent to mention here that *"default"* is defined in Sec 3(12) in very wide terms as meaning non-payment of a debt once it becomes due & payable, which includes non-payment of even part thereof. Even part of the dues, once becomes payable comes within the meaning of debt and if not paid will amount to *"default"*.

10. In the present case it is seen that there is a clear admission of non-payment of balance part debt and

therefore there has been occurrence of default in payment of the claimed debt by the respondent corporate debtor.

11. Needless to say, that the expressions "Operational Creditor" and "Operational debt" have been defined in Section 5 (20) and 5 (21) of the Code, which are reproduced below.

> "*5. In this part, unless the context otherwise requires, - ....*
>
> *...*
>
> *(20) "operational creditor" means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred;*
>
> *(21) "operational debt" means a claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority;*"

12. From the definition of "operational creditor" and "operational debt", it can be seen that the following persons can claim to be an "operational Creditor".

i. *The person who has claim in respect of provisions of goods (supplied) to the corporate debtor.*

ii. *Persons who have provided service to the corporate debtor, including those who are in employment.*

iii. *Central Govt., State Govt. and local authorities, who are entitled to claim debt in respect of dues arising under any law for time being in force.*

13. It is thus seen that the unpaid petitioner, who has supplied Arecanuts to the Corporate Debtor, comes within the purview of 'Operational creditor'.

14. The procedure in relation to the Initiation of Corporate Insolvency Resolution Process by the "Operational Creditor" is delineated under Section 9 of the Code. The present application filed by operational

creditor, accordingly, has to be dealt with in terms of Section 9 of the Code which envisages that.

> *"Application for initiation of corporate insolvency resolution process by operational creditor.*
>
> *9. (1) After the expiry of the period of ten days from the date of delivery of the notice or invoice demanding payment under sub-section (1) of section 8, if the operational creditor does not receive payment from the corporate debtor or notice of the dispute under subsection (2) of section 8, the operational creditor may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process.*
>
> *(2) The application under sub-section (1) shall be filed in such form and manner and accompanied with such fee as may be prescribed.*
>
> *(3) The operational creditor shall, along with the application furnish-*
>
> > *(a) a copy of the invoice demanding payment or demand notice delivered by the operational creditor to the corporate debtor;*
> >
> > *(b) an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt;*
> >
> > *(c) a copy of the certificate from the financial institutions maintaining accounts of the operational creditor confirming that there is no*

payment of an unpaid operational debt by the corporate debtor, if available;

(d) a copy of any record with information utility confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available; and

(e) any other proof confirming that there is no payment of any unpaid operational debt by the corporate debtor or such other information, as may be prescribed.

(4) An operational creditor initiating a corporate insolvency resolution process under this section, may propose a resolution professional to act as an interim resolution professional.

(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order–

(i) admit the application and communicate such decision to the operational creditor and the corporate debtor if, -

(a) the application made under sub-section (2) is complete;

(b) there is no payment of the unpaid operational debt;

c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;

(d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and

(e) there is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4), if any.

(ii) reject the application and communicate such decision to the operational creditor and the corporate debtor, if -

(a) the application made under sub-section (2) is incomplete;

(b) there has been payment of the unpaid operational debt;

(c) the creditor has not delivered the invoice or notice for payment to the corporate debtor;

(d) notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility; or

(e) any disciplinary proceeding is pending against any proposed resolution professional:

Provided that Adjudicating Authority, shall before rejecting an application under subclause (a) of clause (ii) give a notice to the applicant to rectify the defect in his application within seven days of the date of receipt of such notice from the Adjudicating Authority.

(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5) of this section."

15. Sub-section (1) of Section 9 mandates filing of the petition only after expiry of the period of 10 days from the date of delivery of notice or invoice demanding payment under sub-section (1) of Section 8.

16. In the present case admittedly the demand notice in Form-3 as per Section 8 of the Code was sent on 27.09.2019. It is thus seen that before filing the present application under Section 9 of the Code, requisite notice under Section 8 was duly served on the Respondent. In response to Section 8 notice, respondent corporate debtor replied on 07.10.2019 acknowledging the outstanding amount and expressed its inability to pay the debt due to financial difficulty. In other words, the corporate debtor had not disputed the claim in its reply given in terms of sub-section (2) of Section 8 of the Code.

17. The present application under Section 9 of the Code has been filed in requisite Form-5, wherein it was specifically mentioned that in the reply received from the corporate debtor there has been admission of debt

and default and no dispute was raised against the claim of the applicant operational creditor. The application under Section 9 is thus complete and the required particulars have been furnished along with details of subsistence of default.

18. Moreover, in compliance of Section 9 (3) (a) of the Code the Petitioner has placed on record copy of relevant invoices, Copy of Ledger Account of Corporate Debtor for Financial Year 2016-17 to 2018-19, Copy of audited Financial Statement of applicant for the financial year 2017-18 and the Bank statement of applicant operational creditor from 01.04.2017 to 31.03.2018 including tabular statement showing computation of amount due and the date of default. In addition, copy of demand notice issued in requisite Form 3 delivered by the Petitioner Operational Creditor to the respondent Corporate Debtor has also been annexed to the application.

19. That apart in compliance of sub-section (3) (b) and (C) of Section 9 of the Code, the petitioner has affirmed

that respondent corporate debtor has not raised any dispute in respect of the unpaid operational debt.

20. It is reiterated that in the present case the default committed by the corporate debtor is not denied. 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 applicant operational creditor. In fact, there is a clear admission of debt and default and therefore there is no need to comply with any additional requirement as provided in Clauses (d) and (e) of sub-section (3) of Section 9 of the Code.

21. In terms of sub-section (4) of Section 9 of the Code the Petitioner Operational Creditor has proposed the name of Mr. Vikram Singh Rathore, for appointment as Interim Resolution Professional. There is a declaration made by him that no disciplinary proceedings are pending against him in Insolvency and Bankruptcy Board of India or elsewhere.

22. It is also pertinent to note that the default of operational debt clearly exceeds the ceiling of Rs. 1 lakh,

as provided in Section 4 of the Code. The corporate debtor has also not raised any dispute in respect of the claims of the applicant operational creditor. Rather the respondent has sought time to repay the balance outstanding claim debt. It is thus seen that the application preferred by the operational creditor is complete in all respect and there is default committed by corporate debtor in making payment of the operational debt.

23. Hon'ble Supreme Court in the case of Mobilox Innovations Private Limited V. Kirusa Software Private Limited, reported in AIR 2017 SC 4532 has held that:

> *"25. Therefore, the adjudicating authority, when examining an application under Section 9 of the Act will have to determine:*
>
> *(i) Whether there is an "operational debt" as defined exceeding Rs.1 lakh? (See Section 4 of the Act)*
>
> *(ii) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid? and*

(iii) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?"

24. In the present application all the aforesaid requirements have been satisfied. It is seen that the application preferred by applicant operational creditor is complete in all respect. 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 applicant operational creditor. Respondent company also did not raise any dispute regarding the existence of operational debt. In fact, the claim of default committed by the corporate debtor has not been denied. Once the application is complete and in the absence of any dispute and with the subsistence of default, the application is liable to be admitted.

25. Therefore, on fulfilment of requirements of Section 9 (5) (i) (a) to (d) of the Code, the present application is admitted.

26. In terms of sub-section (6) of Section 9 of the Code the Corporate Insolvency Resolution Process in respect of respondent corporate debtor shall commence from the date of this admission order.

27. Accordingly, we appoint Mr. Vikram Singh Rathore, having registration number IBBI / IPA-003 /IP-N00203 / 2018-19 / 12361 with email-id vikra.nimbli@gmail.com as an Interim Resolution Professional.

28. The petitioner is directed to pay a sum of Rupees one lakhs to the Interim Resolution Professional to meet the expenses 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. This shall however be subject to adjustment by the Committee of Creditors as accounted for by Interim

Resolution Professional and shall be paid back to the petitioner.

29. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 9 of the Insolvency & Bankruptcy Code, 2016.

30. We also declare moratorium in terms of Section 14 of the Code, which shall have effect from the date of this order till the completion of Corporate Insolvency Resolution Process as per sub-section (4) of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

> *"(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 Financial Assets and Enforcement of Security Interest Act, 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."

31. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

32. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by

Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

33. Let the copy of the order be communicated to the Operational Creditor and the Corporate Debtor in accordance with Section 9 (5) (i) of the Code. The office is also directed to communicate a copy of the order additionally to the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi and Haryana at the earliest possible but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified to the public at large.

-sd-

(B.S.V PRAKASH KUMAR)
ACTG. PRESIDENT

-sd-

(S. K. MOHAPATRA)
MEMBER (T)

Shammy