

**IN NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT- V**

CP (IB) No. 1078 of 2022

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

Shanti Agro Foods Pvt. Ltd,

(CIN No.: U15400HR2013PTC050124)

Near Vaterinary Hospital Nilokheri
Karnal Haryana- 132117.

.....Operational Creditor

Vs

**Fortune First International Trading
& Services LLP,**

303 Pegasus Parvati Nagar ChS Ltd.
Near Sai Ganesh Mandir Bus Depot
Versova, Yari Road Andheri Mumbai
400061.

..... Corporate Debtor

Order Pronounced On: 02.05.2023

Coram:

Hon'ble Shri. Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Shri. Prabhat Kumar, Member (Technical)

Appearances (via Videoconferencing)

For the Operational Creditor: Mr. Mustafa Kachwala, Advocate

For the Corporate Debtor: None

Per: Shri. Kuldip Kumar Kareer, Member (Judicial)

ORDER

1. This Company Petition is filed by Shanti Agro Foods Pvt. Ltd, (hereinafter called as the “**Operational Creditor**”), seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against Fortune First International Trading & Services LLP, (hereinafter referred to as the “**Corporate Debtor**”) by invoking the provisions of Section 9 Insolvency and Bankruptcy code (hereinafter called “**Code**”) read with Rule 6 of the Insolvency & Bankruptcy (Application to Adjudication Authority) Rules, 2016 for a Resolution of Operational Debt of Rs. **1,13,15,775/-**.

FACTS OF THE CASE

2. It has been submitted that the Corporate Debtor approached the Operational Creditor for supply of rice of ‘Basmati’ variety. The Corporate Debtor placed various orders for the same from 03.12.2021 to 07.12.2021. The Operational Creditor supplied the basmati rice in various quantum through truck loads to the plant of the Corporate Debtor at Village Kambopura, Karnal, Haryana.
3. The Operational Creditor has issued various invoices along with corresponding goods carrier receipt and delivery challan which are annexed with the petition.

4. The Operational Creditor has submitted that that it was mutually agreed between the Corporate Debtor and Operational Creditor that the payment would be made within 15 days from the invoices. It has further been submitted that the invoices were not duly paid by the Corporate Debtor within the period as per the terms of payment i.e 15 days from the invoices and therefore, default had occurred.
5. The date of default with respect of four invoices dated 03.12.2021 is 18.12.2021, the date of default with respect of four invoices dated 06.12.2021 is 21.12.2021 and date of default for invoice dated 07.12.2021 is 22.12.2021.
6. The Operational Creditor approached the Corporate Debtor on various occasions for the payment of the invoices, but it has neglected to pay the outstanding dues. It has also been submitted that the Corporate Debtor has shut down its office at the registered address mentioned in master data as well as its plant at village Kambopura, Karnal, Haryana.
7. The Operational Creditor issued a Demand Notice dated 04.05.2022 under Section 8 of the Code through speed post duly served on 05.05.2022 and through email to the Corporate Debtor for discharging its liabilities to the tune of Rs. 1,13,77,624.19/-. The Corporate Debtor has further acknowledged the liability vide its reply dated 10.05.2022
8. The Corporate Debtor did not make the payment of the outstanding amount despite receiving a statutory demand notice dated 04.05.2022. This necessitated the Operational Creditor to file the present Petition under Section 9 of the Code before this Tribunal.
9. The Respondent did not appear before this Bench despite notices have been duly served and was proceeded against **Ex-Parte**.

FINDINGS

10. We have heard the Ld. Counsel appearing for the Petitioner and perused the records.
11. The present Company Petition has been filed by the Operational Creditor for the initiation of Corporate Insolvency Resolution Process against the Corporate Debtor, where the Operational Creditor, pursuant to purchase orders between 03.12.2021 to 07.12.2021, rendered supply of goods to the Corporate Debtor and the Corporate Debtor has failed to pay the Outstanding Dues of Rs. 1,13,15,775/-.
12. The Corporate Debtor defaulted the payment of the rightful, non-disputed dues of the Operational Creditor and, therefore, the Operational Creditor issued the Demand Notice dated 04.05.2022 under Section 8 of the Code, in Form no. 3 and Form no. 4, demanding the outstanding amount. The statutory Demand Notice dated 04.05.2022 was sent to the Corporate Debtor through RPAD/ Speed Post.
13. It has been brought to the notice of this Bench that the Corporate Debtor vide its reply dated 10.05.2022 to the notice, acknowledged its liability and only sought additional time to repay the outstanding amount.
14. It has been noted by the Bench that no reply has been filed by the Corporate Debtor in this petition to justify non payment of outstanding dues. Therefore, without any plea raised on behalf of the Corporate Debtor, it cannot be said that there was a pre-existing dispute between the parties justifying non payment by the Corporate Debtor.
15. From the above discussion, it flows that Petitioner has been able to establish that there has been an operational debt in respect of which the default has been committed by the Corporate Debtor. Even otherwise, the averments made in the petition have not be controverted as the Corporate

Debtor has been proceeded against ex-parte and no reply on its behalf has also been filed. Accordingly, the above Company Petition is 'admitted' by passing the following:

ORDER

- a. The above Company Petition No. (IB) 1078 of 2022 is hereby admitted and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Fortune First International Trading & Services LLP.**
- b. This Bench hereby appoints **Mr. Shekhar Kumar Agrawal**, Insolvency Professional, Registration No: IBBI/IPA-002/IP-N00883/2019-20/12874 and having Email Id: shekhar2308@gmail.com as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Financial Creditor shall deposit an amount of Rs. Five Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- d. This Bench hereby prohibits 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; 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.

- e. 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.
- f. 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.
- g. That the order of moratorium shall have effect from the date of pronouncement of this order till the 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.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.

- k. Accordingly, this Petition no. 1078 of 2022 is **admitted**.
1. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)

Sd/-

KULDIP KUMAR KAREER,
MEMBER (JUDICIAL)