

BEFORE THE AJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD

C.P. (I.B) No. 89/9/NCLT/AHM/2018

Coram: Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 07.08.2018**

Name of the Company: Adishwar Minerals & Chemicals
V/s.
Sarvottam Vegetable Oil Refinery Pvt. Ltd.

Section of the Companies Act: Section 9 of the Insolvency and Bankruptcy
Code

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
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1.

2.

ORDER

None present for the Petitioner

The Order is pronounced in the open court, vide separate sheet


MANORAMA KUMARI
MEMBER JUDICIAL

Dated this the 7th day of August, 2018

**BEFORE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH**

**CP.No. (IB) 89/9/NCLT/AHM/2018
CP.NO. (IB)163/9/NCLT/AHM/2018**

In the matter of:

CP.No. (IB) 89/9/NCLT/AHM/2018

Adishwar Minerals & Chemicals,
A-161, Adarsh Mechenicnagar,
Bhamori, Scheme No. 54,
Near MR – 9,
Indore

.....Applicant
[Operational Creditor]

Versus

Sarvottam Vegetable Oil Refinery
Private Limited
Having Registered Office at
34, Sector – A,
Sanwar Road, Industrial Area,
Indore-452 003
M.P.

.....Respondent
[Corporate Debtor]

CP.NO. (IB) 163/9/NCLT/AHM/2018

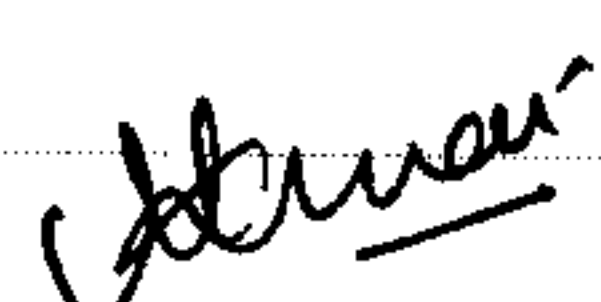
Itarsi Oils and Flours Private Limited,
Khandwa Oils (Unit-2),
Registered Office:
K.N. Building, Subhsash Road,
Raipur – 492 001 Chhattisgarh

.....Applicant
[Operational Creditor]

Versus

Sarvottam Vegetable Oil Refinery
Private Limited
Having Registered Office at
34, Sector – A,
Sanwar Road, Industrial Area,
Indore-452 003
M.P

.....Respondent
[Corporate Debtor]



Order delivered on 7th August, 2018

Coram: Hon'ble Ms. Manorama Kumari, Member(Judicial)

Appearance: Mr. Anand Prabhawalkar, Advocate for the
Applicant Adishwar Minerals & Chemicals
Mr. Vijayesh Atre, Advocae for the
Applicant Itarsi Oils and Flours Private Limited
Mr. Prakashchand Advani, Director, Director,
Corporate Debtor Company is present

COMMON ORDER

1. CP. No. (IB) 89 is filed by the Operational Creditor viz. Adishwar Minerals & Chemicals through its proprietor Mr. Pramod Kumar Dosi, under section 9 of the Insolvency and Bankruptcy Code, 2016 ["Code" for short] read with Rule 6 of the Insolvency and Bankruptcy [Application to Adjudicating Authority] Rules 2016 ["Rules" for short] with a request to initiate Corporate Insolvency Resolution Process (C.I.R.P) against Sarvottam Vegetable Oil Refinery Private Limited, the Corporate Debtor.

2. CP. No. (IB) 163 is filed by the Operational Creditor viz. Itarsi Oils and Flours Private Limited through its General Manager, Mr. Ram Swaroop Chaube under section 9 of the Insolvency and Bankruptcy Code, 2016 ["Code" for short] read with Rule 6 of the Insolvency and Bankruptcy [Application to Adjudicating Authority] Rules 2016 ["Rules" for short] with a request to initiate Corporate Insolvency Resolution Process (C.I.R.P) against Sarvottam Vegetable Oil Refinery Private Limited, the Corporate Debtor.

CP. No. (IB) 89 of 2018:



3. It is submitted that Operational Creditor is in business relationship with the Corporate Debtor prior to 01.04.2017 and has been supplying goods to the Corporate Debtor from time to time. As on 31.10.2017, a sum of Rs. 1,50,000/- was outstanding and payable by the Corporate Debtor Sarvottam Vegetable Oil Refinery Private Limited to the Operational Creditor Adishwar Minerals & Chemicals and since then it is outstanding and payable. The details of the invoice against which Rs. 1,50,000/- is outstanding and payable are given below:

Invoice No. & Date	Description of Goods supplied	Total Invoice Value/Rs.	Amt Paid/Rs.	Amt Outstanding/Rs.	Trans. Details
5/10.06.2017	Fuller Earth – Star/Qty: 16.070 MTs	4,25,000/-	2,75,000/-	1,50,000/-	Via Kuber Transport

Thus, the unpaid amount of Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand Only) plus interest @24% / 15 days for the period starting from the due date till the date of full payment of the invoice is outstanding.

4. The Applicant issued Demand Notice under Section 8 of the Code read Rule 5 of the Rules in Form No. 3 and Form No. 4 along with the invoices on 20.01.2018 calling upon the Respondent company to pay Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand Only) plus interest @24% / 15 days for the period starting from the due date till the date of full payment of the invoice within 10 days of receipt of notice. The notices were served upon the Respondent Company. The Applicant has also submitted affidavit in this respect.

5. It is further stated that the claim of the Applicant is in respect of supply of goods i.e. Fuller Earth- Star to the Respondent company and therefore, the debt due to the Applicant from the Respondent is an operational debt within the meaning of Section 5, sub-section (21) of the Code. The operational debt is due to the



Applicant. Therefore, the Applicant is an Operational Creditor within the meaning of sub-section (5) of Section 20 of the Code. It is also stated that the Respondent company committed default in the payment of operational debt. Therefore, Respondent is a Corporate Debtor within the meaning of sub-section (8) of Section 3 of the Code.

6. The Applicant has proposed the name of Ms. Teena Saraswat Pandey, having address at 387F, 114 Scheme Part I, Behind Diksha Boys Hostel, Sant Nagar, Indore, 452 010 Madhya Pradesh, as Interim Resolution Professional to initiate Corporate Resolution Process against the Corporate Debtor Sarvottam Vegetable Oil Refinery Private Limited. The Applicant has also annexed with the petition, written consent of the Resolution Professional Ms. Teena Saraswat Pandey to accept appointment as the Interim Resolution Professional if an order admitting the present petition is passed. The Resolution Professional has also certified that no disciplinary proceedings are pending against her with the Board or The Indian Institute of Insolvency Professionals of ICAI and that she is eligible to be appointed as a Resolution Professional in respect of the Corporate Debtor in accordance with the provisions of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

7. It is observed that on filing of the petition, notice has been issued to the Corporate Debtor by the Operational Creditor and proof of service of copy of petition on respondent filed with the Tribunal. Thereafter, the matter was listed on 26.02.2018. Since nobody represented from the side of the Respondent company (Corporate Debtor), a notice dated 27.02.2018 has been issued through the Registry and the said notice was returned with the remarks "Refused to Accept". The Applicant (Operational Creditor) also filed another proof of service with this Tribunal showing delivery of notice on 13.03.2018 on the Respondent company (Corporate Debtor). The matter was taken up on 07.06.2018 on which date one Mr.

(Signature)

Prakashchand Advani, one of the directors of the Respondent company (Corporate Debtor) was present in person. He was furnished with a copy of the petition and accordingly two weeks' time was granted to the Respondent company (Corporate Debtor) to file objections. However, no objections were filed by the representative of the Respondent Company (Corporate Debtor). Further, the representative of the Respondent company (Corporate Debtor) who appeared in person during the proceedings of this petition at this Bench of the Tribunal submitted that he has no objection if the petition is admitted.

CP. No. (IB) 163 of 2018

8. In the present matter, the Operational Creditor M/s Itarsi Oils and Flours private Limited had supplied Crude Soyabean Oil on 23rd January, 2018 which was delivered on 25th January, 2018 in response to Broker Note dated 23rd January, 2018 to M/s. Sarvottam Vegetable Oil Refinery Private Limited, the Corporate Debtor. Against these supplies, the Operational Creditor raised two invoices No. 000342 dated 23rd January, 2018 for Rs. 21,13,582.80 and another invoice No. 000343 dated 23rd January, 2018 for a sum of Rs. 21,68,471.56, the total amount of the two invoices being Rs. 42,83,054.36, the consideration of which was payable within three days i.e. by 28th January, 2018. Till date, the entire amount of Rs. 42,83,054.36 is outstanding along with interest @ 15% for the delayed period.

9. The applicant has annexed with this application, Broker's Note, the invoices, proof of delivery through Shree Krishna Transport along with weighment slip and the Ledger Account of the Corporate Debtor in the books of Operational Creditor from 1st January, 2018 to 6th February, 2018.

10. The amount due to the Applicant from the Respondent is in respect of supply of goods. The claim made by the applicant is in respect of provision of goods. Therefore, the amount claimed by the Applicant from the Respondent is operational

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debt within the meaning of Section 5, sub-section (21) of the Code. The operational debt is due to the Applicant. Therefore, the Applicant is an Operational Creditor within the meaning of sub-section (5) of Section 20 of the Code.

11. The amount is due from the Respondent to the Applicant. Respondent is a Company registered under the Companies Act. Therefore, Respondent is a Corporate Debtor within the meaning of sub-section (8) of Section 3 of the Code.

12. The Application filed by the Applicant is complete in all respects since provisions of Section 8 of IBC Code for issuance of notice in Form 3 and Form 4 have been complied with and is not time barred. Further, the Corporate Debtor has never disputed the amount of Operational Debt.

13. Heard the arguments of the learned counsel appearing on behalf of the Applicants of both the applicants, the Operational Creditors. On perusal of the records, it is found that the petitions filed by the Operational Creditors are complete in all respects since provisions of Section 8 of IBC Code for issuance of notice in Form 3 and Form 4 have been complied with and are not time barred. Further, the Corporate Debtor has never disputed the amount of Operational Debt. Since the Respondent company (Corporate Debtor) failed to file objections on the date fixed 09.07.2018, the matter was allowed to proceed in the absence of any representation from the side of the Respondent Company (Corporate Debtor). Looking at the objections filed by the Operational Creditors of both the applications u/s 9 of the Code, this Bench is satisfied that Corporate Debtor has failed to discharge his liability under the Code resulting in occurrence of default in payment of operational debt of Rs.1,50,000/- and interest @ 24% / 15 days for the period starting from the due date till the date of full payment of invoice by the Respondent company (Corporate Debtor) to the Applicant No. 1 in CP. No. (IB) 89 of 2018 and Rs. 42,83,054.36 and interest for the delayed period @15% p.a. to the Applicant of Application No. CP.No. (IB) 163 of 2018. This Bench admits Petition No. CP(IB) 89

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of 2018 under Section 9 of the Code declaring moratorium for the purpose referred to in Section 14 of the Code with the following directions:

- (i) That this Bench, subject to provisions of sub sections (2) and (3) of Section 14 of the Code, hereby prohibits the institution of suits or continuing of pending suits or proceedings against the Corporate Debtor as mentioned above 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, recovery 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 and the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- (ii) 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.
- (iii) That the provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- (iv) That the order of moratorium shall have effect from the date of the Order i.e. 07.08.2018 till the completion of the corporate insolvency resolution process subject to the Proviso under sub section (4) of Section 14.
- (v) That this Bench hereby directs to cause public announcement of the corporate insolvency resolution process immediately as specified under section 15 of the Code.

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- (vi) That this Bench hereby appoints Ms. Tina Saraswat Pandey, an Insolvency Professional with registration no. IBBI/IPA-001/IP-P00652/2017-18/11126 having address at 387F, 114 Scheme Part I, Behind Diksha Boys Hostel, Sant Nagar, Indore, 452 010 Madhya Pradesh, as Interim Resolution Professional to carry out the functions as mentioned under the Insolvency and Bankruptcy Code.
- (vii) That this Bench hereby directs the Registry of NCLT Ahmedabad to communicate a copy of this Order to the Applicants i.e. Operational Creditors and Corporate Debtor and to the Interim Resolution Professional.
14. Both the petitions filed under section 9 of the Code are complete in all respects. However, since CP.No. (IB) 89 is admitted under section 9 of the Code declaring moratorium for the purpose referred to under section 14 of the Code, the Applicant of CP. No. (IB) 163 having the bonafide claim, has the right to file his claim before the Interim Resolution Professional appointed in CP. No. (IB) 89.
15. The above petitions are disposed of accordingly. No orders as to costs.


Ms. Manorama Kumari
Member (Judicial)
Adjudicating Authority