

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

CP (IB) 2139/MB/C-IV/2019

Under Section 9 of the Insolvency
& Bankruptcy Code, 2016

In the matter of

M/s Pawar Milk Suppliers

...Operational Creditor

v/s.

Pandhari Milk Private Limited

...Corporate Debtor

Order Delivered on 03.09.2019

Coram:

Mr. Rajasekhar V. K.	:	Hon'ble Member (Judicial)
Mr. Ravikumar Duraisamy	:	Hon'ble Member (Technical)

Appearances:

For the Petitioner: Adv. Ami Jain

For the Respondent: Adv. Khushboo Shah Rajani

ORDER

Per: Rajasekhar V.K., Member (Judicial)

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (**IBC**) by M/s Pawar Milk Suppliers, represented by its proprietor, Sahebrao Narayan Pawar ("the Operational Creditor"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Pandhari Milk Private Limited ("the Corporate Debtor").

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2. The Corporate Debtor is a company incorporated on 19.06.2014 under the Companies Act, 2013, as a private limited company under the Registrar of Companies, Maharashtra, Pune. Its Corporate Identity Number (CIN) is U74999PN2014PTC151510. Its registered office is A/P Maruti Mandir, Jath, Taluk Jath, Sangli, Maharashtra 416 404. Therefore, this Bench has jurisdiction to deal with the present petition.
3. The present petition was filed on 06.06.2019 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of Rs.33,00,000/- as principal amount and Rs.3,90,576/- as interest amount as on 31.07.2018, which is the date of default.
4. The case of the Operational Creditor is that it had supplied milk to the Corporate Debtor on various dates. The last Bill of Supply dated 30.11.2018 along with challans for supply of milk has been placed on record as **Exhibit G (colly)** (pp.26-38). The total sum due was to the tune of Rs.86,80,288/- (Rupees eighty-six lakh eighty thousand two hundred and eighty-eight only) [**Exhibit K** (pp.68-69)].
5. The Operational Creditor has attached copies of the bank statements at **Exhibit 'H'**, evidencing receipt of partial payments on various dates from between 04.01.2019 and 22.01.2019 to the tune of Rs.42,79,250/- (Rupees forty-two lakh seventy-nine thousand two hundred and fifty only).
6. Therefore, the remaining debt due and payable to the Operational Creditor is Rs.44,01,038/- (Rupees forty-four lakh

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one thousand and thirty-eight only), which has been unequivocally acknowledged by the Corporate Debtor *vide* its letter dated 31.01.2019, at p.71, but requested the Operational Creditor to continue to supply of milk.

7. The Operational Creditor had served a Demand Notice in Form 3 dated 20.04.2019 to the Corporate Debtor (**Exhibit 'E'**, pp.21-24) in terms of section 8 of the IBC. No reply was received from the Corporate Debtor within the statutory period of ten days.
8. The Corporate Debtor has, however, chosen to file a reply to the Petition.
9. It is seen from the affidavit in reply dated 21.08.2019, that the Corporate Debtor had purchased raw milk from the Operational Creditor for the purpose of business. The reply also admits that amounts were due to the Operational Creditor. However, it does not quantify the amounts due to the Operational Creditor. The Corporate Debtor has submitted that due to unfavourable market conditions, the company's profitability and liquidity are affected.
10. We have heard the arguments of both sides and perused the records.
11. It is noticed from the letter dated 31.01.2019 at p.71 and the affidavit in reply dated 21.08.2019 that the Corporate Debtor has admitted the liability and seeks time for payment. This was also emphasised by the Learned Counsel for the Corporate Debtor at the hearing of the Petition. Therefore, the reply of the Corporate Debtor, and the statement of the Learned Counsel for

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the Corporate Debtor, underscores the fact that the Corporate Debtor is at present unable to meet the liability, which is more than one lakh rupees. This clearly establishes the existence of debt and default within the meaning of sub-sections (11) and (12) of section 3 of the IBC.

12. The application made by the Operational Creditor is complete in all respects as required by law, and it clearly shows that the Corporate Debtor has not paid the dues. There is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of Corporate Insolvency Resolution Process against the Corporate Debtor.
13. The Operational Creditor has proposed the name of **Mr Udaykumar Bhaskar Bhat**, Registration No.IBBI/IPA-001/IP/P-01425/2018-19/12234, as Interim Resolution Professional. He has filed his written communication in Form 2 as required under rule 9(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 with his, along with the certificate of registration.
14. It is, accordingly, hereby ordered as follows: -
 - (a) The petition filed by M/s Pawar Milk Suppliers under section 9 of the IBC read with rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against the corporate debtor is **admitted**.
 - (b) There shall be a moratorium under section 14 of IBC, in regard to the following:

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- (i) 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;
 - (ii) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
 - (iii) 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;
 - (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.
- (c) Notwithstanding the above, during the period of moratorium, -
- (i) The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated, suspended or interrupted during the moratorium period;
 - (ii) The provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be

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notified by the Central Government in consultation with any sectoral regulator.

- (d) The moratorium shall have effect from the date of this Order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of corporate debtor under section 33 of the IBC, as the case may be.
- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) **Mr Udaykumar Bhaskar Bhat**, Registration No. IBBI/IPA-001/IP/ P-01425/2018-19/12234, having address at B-304, Goldville, Aundh-Ravet Road, Dange Chowk, Thergaon, Pune 411 033, email: udaybhat2805@gmail.com, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as mentioned under IBC. The IRP shall carry out functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC. The fee payable to IRP/RP shall be compliant with Regulations, Circulars and Directions issued by the Insolvency & Bankruptcy Board of India (IBBI) as may be applicable.

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- (g) During the CIRP period, the management of the Corporate Debtor shall vest in the IRP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- (h) The Operational Creditor shall deposit a sum of Rs.1,00,000/- (Rupees one lakh only) with the IRP to meet the expenses towards issue of public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- (i) The Registry is directed to communicate this order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email **within two days** from the date of this Order.
- (j) A copy of this Order be also sent to the Registrar of Companies, Maharashtra, Pune, for updating the Master Data of the Corporate Debtor, who shall send a compliance report in this regard to the Assistant Registrar, NCLT, Mumbai Bench, **within seven days**.

Sd/-
RAVIKUMAR DURAISAMY
Member (Technical)
03.09.2019

Sd/-
RAJASEKHAR V.K.
Member (Judicial)