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**NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD (COURT NO. II)**

**CP (IB)/562/2019**

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

**In the matter of:**

**Givaudan(India) Private Limited**

**...Applicant/Operational Creditor**

**Versus**

**Captivate Foods Private Limited**

**...Respondent/Corporate Debtor**

**Order Pronounced on: 25.04.2022**

**Coram:**

**DR. DEEPTI MUKESH,  
HON'BLE MEMBER (JUDICIAL)  
AJAI DAS MEHROTRA,  
HON'BLE MEMBER (TECHNICAL)**

**MEMO OF PARTIES****GIVAUDAN(INDIA) PRIVATE LIMITED**

Office at: Plot No. 2<sup>nd</sup> Cross  
Jigani Industrial Area,  
Anekal Taluka, Jigani,  
Karnataka-562106.

**...Applicant/Operational Creditor**

**Versus**

**CAPTIVATE FOODS PRIVATE LIMITED**

Office at: Survey No. 156/P,  
Plot No. 2, Village- Naranka,  
Rajkot, Jamnagar Highway,  
B/H murlidhar Hotel, Paddhari,  
Rajkot, Gujarat- 360110.

**...Respondent/Corporate Debtor**

**Present:**

For the Applicant: Mr. Chirag Gupta, Adv.

For the Respondent: None-Appeared.

**ORDER**

1. The instant Application is filed by Givaudan (India) Private Limited (for brevity '**Applicant**') through Mr. Gururaj Kashi, who is duly authorized vide Board Resolution dated 03.12.2015, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity '**Code**') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against Captivate Foods Private Limited (for brevity '**Corporate Debtor**').

2. The Applicant is private limited company, incorporated under the provisions of the Companies Act, 1956 registered with Registrar of Companies, Bangalore with CIN: U24290KA1985PTC007056 and its registered office is located at: Plot No. 2nd Cross Jigani Industrial Area, Anekal Taluka, Jigani, Karnataka-562106. The Applicant is engaged in the business of manufacturing of flavours and scents for foods.
3. The Corporate Debtor is a Private Limited Company, incorporated under the provisions of the Companies Act, 2013, duly registered with Registrar of Companies, Ahmedabad on 17.09.2014 with CIN: U15400GJ2014PTC080811 and its registered office is located at Survey No. 156/P, Plot No. 2, Village- Naranka, Rajkot, Jamnagar Highway, B/H Murlidhar Hotel, Paddhari, Rajkot, Gujarat- 360110. The authorized share capital of the Corporate Debtor is Rs. 1,00,00,000/- and Paid-up share capital of the Company is Rs.1,00,00,000/-. The Corporate Debtor is engaged in the business of manufacturing and supplying of instant ready to eat noodles.
4. As submitted by the applicant, the following table reflects the dates on which material was supplied, invoices raised, and amount become due against each invoice.

Invoice No.	Date	Product Delivered vide LR No & Date	Amount in INR	Amount Due Date
172240501	16.06.2017	20001 dated 16.06.2017	Rs. 6,31,125/-	16.07.2017
172240552	24.06.2017	20010 & 20011 dated 24.06.2017	Rs. 18,93,375/-	24.07.2017
2517000459	14.07.2017	6186837 dated 15.07.2017	Rs. 1,62,250/-	14.08.2017
2517000684	20.07.2017	6186994 dated 20.07.2017	Rs. 4,80,260/-	20.08.2017
2517000692	20.07.2017		Rs. 3,48,100/-	20.08.2017
Total			35,15,110/-	

5. The applicant submits that total amount of Rs. 35,15,110/- as per invoices outstanding is payable by corporate debtor, to the applicant, out of which an amount of Rs. 2,50,000/- is paid by corporate debtor. Therefore, an amount of Rs. 32,65,110/- remains due and payable. Further it is submitted that the differential tax liability amounting to Rs. 2,59,875/- was due and payable by the corporate debtor as it failed to issue 'C form' for invoice no. 172240501 dated 16.06.2017 and invoice no. 172240552 dated 24.06.2017. The corporate debtor is further liable to pay the interest on differential sales tax due to non-

receipt of C forms which amount to Rs. 48,727/- thus, the total amount of Rs. 35,73,712/- is due and payable by the corporate debtor to the applicant.

6. The applicant submitted that as per invoices issued by the operational creditor it is clearly mentioned that the payment shall be cleared within 30 days from the date of receipt of the said invoice. The amounts in various bills have fallen due on different dates. The copies of lorry receipts showing that the material was duly delivered along with the invoices are annexed with application.
7. The applicant submitted that when the corporate debtor failed to make payment, the applicant sent the demand notice dated 07.11.2017. After receipt of the demand notice the corporate debtor approached the applicant and assured to make payments at the earliest. But the corporate debtor failed to pay to the applicant.
8. It is submitted that applicant awaited payments for more than a year but no payment was received hence issued the demand notice through its legal counsel dated 16.11.2018 under Section 8 of Code for payment of Rs. 35,73,712/-, which was duly served on the Corporate Debtor. The track report is filed, which mentions 'Item Delivery Confirmed'. The Applicant stated that

the Corporate Debtor had neither raised any dispute to said notice nor made any payment towards outstanding dues. Thus, the Applicant filed present Application under Section 9 of Code. As per Part IV of Form-V of the Application, total amount claimed by the Applicant is Rs. 35,73,712/- and date of default is mentioned as 20.08.2017.

9. In the compliance of the order dated 13.11.2019, the applicant has made paper publication on 19.02.2020 in “Sandesh” newspaper, Rajkot edition, wherein the registered office of the respondent company is situated.
10. Perusal of the record of the proceedings shows that despite service of notice by post and email upon the Corporate Debtor and further through paper publication, none appeared nor any reply is filed by the corporate debtor and, therefore, an order to proceed *ex-parte* against the Corporate Debtor was passed on 10.08.2021.
11. The applicant has filed an Affidavit under Section 9 (3) (c) stating that no amount has been received by the corporate debtor for the outstanding operational debt.
12. The Applicant has filed an Affidavit under Section 9 (3) (b) stating that after serving of demand notice, no notice of dispute is given by the Corporate Debtor.

13. The Registered Office of the Corporate Debtor is situated in Rajkot and therefore this Tribunal has jurisdiction to entertain and try this Application.
14. As per the Part IV of Form 5 of the Application the date of default is mentioned as 20.08.2017 & the present Application is filed in July 2019. Hence the debt is not time barred and the Application is filed within the period of limitation.
15. It is apparent from the records that the Corporate Debtor has failed to make payment for the goods received from the Applicant and despite the issuance of notice under Section 8 of the Code by the Applicant, neither the payment was made by the Corporate Debtor nor any notice of dispute was sent by the Corporate Debtor. Thereafter, the Corporate Debtor did not file reply to the present application and was proceeded *ex-parte*.
16. We have considered the submissions made and have perused the documents on record. The claim of the operational creditor stands established and prima facie there is default in payment of the amount due to the Applicant without any dispute in existence. Moreover, the claim of applicant is not contested by corporate debtor inspite of various opportunities given, which amounts to admission of debt.

17. In the given facts and circumstances, the present application is complete u/s 9(5)(i)(a) and Applicant is entitled to claim its dues, a fact which remained uncontroverted, establishing the default in payment of the operational debt. The present application is admitted in terms of Section 9 (5)(i) of the Code.
18. The applicant has not proposed the name of Interim Resolution Professional(IRP), and therefore, this Bench appoints Mr. Atul Jashwantraai Sheth having registration number IBBI/IPA-001/IP-P02463/ 2021-2022/ 13854 (email: atulshethip@gmail.com, Address: B-27, Saiyam Apartments, , Near Nehru Nagar, Ambawadi, Near L Colony, Ahmadabad, Gujarat- 380015 ), as the Interim Resolution Professional subject to condition that no disciplinary proceedings are pending against him. The IRP is required to file consent in Form 2 under Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 and make disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 within a period of one week from this order.
19. As a consequence of the Application being admitted in terms of Section 9(5) of the Code, the moratorium as envisaged under the provisions of Section 14(1) shall follow in relation to the Corporate Debtor prohibiting all of the actions mentioned under

Section 14(1)(a) to (d). However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall remain in force.

20. We direct the Applicant to deposit a sum of Rs. 2,00,000/- with the Interim Resolution Professional, namely Mr. Atul Jashwantraai Sheth to meet out 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 Persons) Regulation, 2016. The needful shall be done within one week from the date of receipt this of order by the Applicant.
21. Copy of the order shall be communicated to the Applicant, Corporate Debtor as well as to the IRP appointed herein, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records and also to RoC for updating the Master Data. RoC shall send compliance report to the Registrar, NCLT.

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**Ajai Das Mehrotra**  
**Member (Technical)**

**-sd-**

**Dr. Deepti Mukesh**  
**Member (Judicial)**

*Abhishek Singh*