

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT- III**

IB-192(ND)/2021

IN THE MATTER OF

**Ram Ratan Jagati (Sole Proprietor of JJ Trading FZE)
...Operational Creditor/Applicant**

Versus

**Alstrong ACP Manufacturing India Pvt. Ltd.
...Corporate Debtor**

Coram:

**Shri Bachu Venkat Balaram Das
Hon'ble Member (Judicial)**

**Shri Virendra Kumar Gupta
Hon'ble Member (Technical)**

Delivered on: 18.04.2022

Appearances:

Operational Creditor : Adv. Dheeraj Gupta
Corporate Debtor : Adv. Karan Gandhi

ORDER

Per: Bachu Venkat Balaram Das, Member (Judicial)

1. The case of the Applicant/Operational Creditor in the present case under Section 9 of IBC, 2016 is that the Corporate Debtor in the year 2015 approached the Applicant for supplying Crude Palm Oil. A total of six transactions happened between the parties. Out of the said 6 invoices,



payments with respect to three invoices were made in the year 2017-2018 and the payment for the remaining three invoices was not made.

2. The Applicant/Operational Creditor issued a Demand Notice under Section 8 of IBC, 2016 to the Corporate Debtor on 13.03.2020, which was duly served upon the Corporate Debtor through an e-mail on the same date. The Corporate Debtor in his reply dated 16.03.2020 to the said Section 8 notice admitted the default and requested a grant of time for making the payment. The amount in default in the present case is Rs.39,88,27,536/- (being US\$ 5,362,027 converted at exchange rate @ Rs.74.38 (as on 12.03.2020)).
3. In Part-4 of Section 9 application, the Applicant has stated that for three invoices against which payment is still pending. The details of the said invoices are given hereunder.

Invoice No.	Dated	Amount (In US dollars)
JJ/EXP/049	12-Mar-15	1,787,264
JJ/EXP/052	13-Mar-15	1,787,400
JJ/EXP/053	13-Mar-15	1,787,362.93
Total		5,362,027

4. The Ld. Counsel appearing for the Corporate Debtor submitted that the Corporate Debtor has admitted the default. The Ld. Counsel also submitted that the Corporate Debtor filed an affidavit in compliance with the order dated 01.04.2021 passed by this Tribunal wherein it was submitted that the Corporate Debtor has no business as on date and



the Corporate Debtor is expecting to receive some amount advanced to its related party and that he will make the payments as and when funds are available.

5. We have heard the Ld. Counsel for the parties. From the perusal of the records, it is evident that the Corporate Debtor has paid part payment of the total amount. The last payment of USD 1,338,750.00 was made on 04.03.2018 which is more than the threshold limit at the relevant point in time. Thus, the debt is due and payable both in fact and in law.
6. It is seen from the records that notice of default under Section 8 has been delivered and an affidavit under Section 9(3)(b) of IBC has also been filed. Having heard the submissions and perused the records, we are of the view that a clear case of the default has been made out by the Applicant and the present application under Section 9 IBC needs to be admitted.
7. The Applicant has proposed the insolvency resolution professional. This Tribunal, hereby, appoints Insolvency Professional namely, **Mr Alok Kumar Agarwal** having Registration Number IBBI/IPA-001/IP-P00059/2017-18/10137 (Email ID- alok@insolvencyservices.in) as Interim Resolution Professional as proposed by Operational Creditor. The IRP is directed to take charge of the respondent corporate debtor's management immediately. He is also directed to cause public announcement as prescribed under section 15 of the IBC, 2016, within three days from the date of this order received, and call for submissions of claim in the manner as prescribed.




8. The moratorium is declared which shall have effect from this Order till the completion of CIRP, for the purposes referred to in section 14 of the IBC, 2016. It is ordered to prohibit all of the following, namely: -
- a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent 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 respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
 - d. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the respondent.
9. The supply of essential goods or services of the Corporate Debtor shall not be terminated, suspended or interrupted during the moratorium period. The provisions of sub-section (1) of section 14 of IBC, 2016 shall not apply to such transactions, as notified by the central government.



10. The IRP shall comply with the provisions of sections 13(2), 15, 17 and 18 of the Code. The directors of the Corporate Debtor, its Promoters or any person associated with the management of the corporate debtor shall extend all assistance and cooperation to the IRP as stipulated under section 19 for discharging his functions under section 20 of the IBC, 2016.
11. The operational Creditor is directed to send the copy of this Order to the IRP with immediate effect, so that he could take charge of the corporate debtor's assets etc., and make compliance with this order as per provisions of IBC, 2016.
12. The Registry is directed to serve a copy of this order on the Registrar of Companies, Delhi & Haryana for appropriately updating the status of Corporate Debtor on the M/o Corporate Affairs website for information of the general public. The RoC as aforesaid shall then file a compliance report in this regard with this Adjudicating Authority.
13. The order is pronounced by this Adjudicating Authority in Virtual Hearing.



(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)



(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)