

**In the National Company Law Tribunal
Kolkata Bench
Kolkata**

CP(IB)No.68/KB/2018

In the matter of:

An application for initiation of Corporate Insolvency Resolution Process 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;

-And-

In the Matter of:

Jeco Agrovet Private Limited, a private limited company registered under the Companies Act, carrying on business at Chitrakot 230A, AJC Bose Road, Kolkata-700020.

.....Operational Creditor

In the Matter of:

M/s Emmtech Farms Pvt. Ltd., a company within the meaning of the Companies Act, 1956 and an existing company within the meaning of the Companies Act, 2013, having its registered office at 7, M. Samar Sarani, (radio gali), Near Chiria Mod, Kolkata - 700002.

..... Corporate Debtor

CORAM: Shri M.B. Gosavi, Member (Judicial)

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Counsels appeared:

For Corporate Debtor

1. Mr. Sankarsan Sarkar, Advocate
2. Mr. Shwetaank Nigam, Advocate

For Operational Creditor

1. Mr. Ratul Das, Advocate

Date of pronouncement of order: 30th July, 2019.

ORDER

Per Shri M.B. Gosavi, Member (J):

1. **M/s Jeco Agrovet Pvt. Ltd.** - the Operational Creditor has filed this application under Section 9 of Insolvency and Bankruptcy Code, 2016 against **M/s Emmtech Farms Pvt. Ltd.** - the Corporate Debtor to start Corporate Insolvency Resolution Process (in short "CIRP") of the Corporate Debtor as the Corporate Debtor committed default in paying Operational debt of Rs. 40,71,210/- (Rupees Forty Lakh Seventy One Thousand Two Hundred Ten Only).
2. It is the case of the Operational Creditor that by various invoices from 01.04.2014 to 31.10.2014, the Operational Creditor supplied the Corporate Debtor goods i.e. poultry feeds. The Corporate Debtor having received goods did not make payment of price and committed default of operational debt of above amount. On 11.04.2017, the Operational Creditor delivered the Corporate Debtor notice under Section 8 of Insolvency and Bankruptcy Code, claiming payment of operational debt.

In spite of receipt of notice, the Corporate Debtor neither replied the notice pointing out any dispute about outstanding amount payable or about the quality of goods received. Hence, this proceeding is filed.

3. The Operational Creditor filed affidavit to comply provisions of Section 9(3)(b) and 9(3)(c) of the Insolvency and Bankruptcy Code, 2016. He did not suggest the name of Interim Resolution Professional (in short "IRP") and left the matter for discretion to this Adjudicating Authority.

4. Upon service of notice of this Petition, the Corporate Debtor appeared through its Director, Mr. Ram Sagar Verma. He filed reply affidavit. He mainly raised two defenses:-

(i) The claim is barred by limitation.

(ii) Goods supplied were defective.

5. The Operational Creditor filed rejoinder and reiterated his claim.

6. I heard both Ld. Counsel appearing for the Parties. I Perused the record.

7. It is not in dispute that the Operational Creditor sold and supplied goods worth more than Rs. 40 Lacs to the Corporate Debtor. It is not in dispute that the Corporate Debtor has to pay the sum more than Rs. 40 Lacs as operational debt and he committed default in paying the debt.

8. As far as second defense of Corporate Debtor is concerned, i.e. goods were defective etc., cannot be considered at such belated stage. Having received goods right from 2014 to 2017 and having not raised any dispute at earlier point of time, I hold that such defense is after thought and dispute as raised appears to have said only to avoid the payment of operational debt. Moreover, the Corporate Debtor received demand notice. He did not reply the notice by pointing out existence of such dispute.

9. The Corporate Debtor contended that the claim is barred by limitation. Ld. Defense Counsel submitted that such stale claim cannot be

considered. He relied on Ruling of Apex Court in case of K. Sashidhar Vs. Indian Overseas Bank (Civil Appeal No. 10673 of 2018).

10. I perused the Ruling. It is held by Hon'ble Apex Court that :-

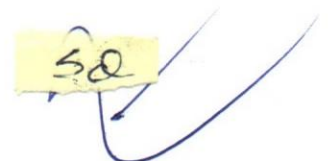
"Besides, the Court adverted to the principle that right to sue accrues on the date when default occurs and if the default occurred even three years prior to the date of filing of the application, the same cannot be treated as "debt that is due and payable" or "debt" due."

11. In this case, it is not at all in dispute that last consignment of the goods was received by the Corporate Debtor on 31.12.2014. Hence, it has to be held that right to sue the Corporate Debtor accrued to the Operational Creditor in December 2014. This proceeding is filed on 22.11.2017. It is filed well within the period of limitation from the date of right to sue accrued to the Operational Creditor. In view of the facts of the case and evidence on record, I hold that there is operational debt due and payable by the Corporate Debtor. The Corporate Debtor committed default in paying the same. The Corporate Debtor had received demand notice under Section 8 of Insolvency and Bankruptcy Code, 2016 but did not reply. This application is otherwise defect free. Hence, I admit the same by following order.

ORDER

- i) The application filed by the Operational Creditor under section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, **M/s Emmtech Farms Pvt. Ltd.**, is hereby admitted.

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ii) I declare a moratorium and public announcement in accordance with Sections 13 and 15 of the IBC, 2016.

iii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.

iv) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:

a) 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;

b) Transferring, encumbering, alienating or disposing of by the corporate debtor 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 corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Operational 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 corporate debtor.

v) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during moratorium period.

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- vi) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any Operational sector regulator.
- vii) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
- viii) Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.
- ix) Necessary public announcement as per Section 15 of the IBC, 2016 may be made.
- x) Ms. Savita Agarwal, IP Registration No. IBBI/IPA-001/IP-P00101/2017-18/10201, E-mail ID: **savita_22@hotmail.com** is appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan.
- xi) The Operational Creditor to pay sum of Rs. 50,000/- (Rupees Fifty Thousand Only) to IRP as advance fees as per Regulation 33(2) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016 which shall be adjusted from final bill.
- xii) The Resolution Professional shall conduct CIRP in time bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.

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xiii) Registry is hereby directed under section 7(7) of the I.B.Code, 2016 to communicate the order to the Operational Creditor, the Corporate Debtor and to the I.R.P. by Speed Post as well as through e-mail.

List the matter on **16.09.2019** for the filing of the progress report.

Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.


30/7/2019
(M.B. Gosavi)
Member (Judicial)

Signed on this, the 30th day of July, 2019.

Deeksha(steno)