



IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
COURT - IV

ITEM No.507
IB/733/ND/2021

IN THE MATTER OF:

AFM Foods Limited	...	Applicant
Versus		
Kumar Food Industries Limited	...	Respondent

Order under Section 9 of IBC, 2016.

Order pronounced on 16.10.2023

Coram:

Mr. P.S.N. PRASAD,
HON'BLE MEMBER (JUDICIAL)

DR. BINOD KUMAR SINHA,
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

Order pronounced in open Court vide separate sheets.

C.P. IB/733/ND/2021 stands dismissed

Sd/-

DR. BINOD KUMAR SINHA,
MEMBER (TECHNICAL)

Sd/-

P.S.N. PRASAD,
MEMBER (JUDICIAL)



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV**

Company Petition No. (IB)-733/ND/2021

**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**

IN THE MATTER OF:

AFM FOODS LIMITED

... APPLICANT/OPERATIONAL CREDITOR

VERSUS

KUMAR FOOD INDUSTRIES LIMITED

... CORPORATE DEBTOR

CORAM:

SH. P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)

DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

Order Delivered: 16.10.2023

ORDER

PER: SH. P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)

The instant application is filed by M/s. AFM Foods Limited (hereinafter referred as 'Applicant'/ 'Operational Creditor') under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to initiate Corporate Insolvency Resolution Process in respect of M/s. Kumar Food Industries Limited (hereinafter referred as 'Respondent Company' or



‘Corporate Debtor’) for defaulting the payment of Rs.2,29,34,173.56/- (Rupees Two Crore Twenty Nine Lacs Thirty Four Thousand One Hundred Seventy Three and Five Six paise Only) which includes principal amount of Rs.1,61,87,079.12/- and interest amount @24% p.a. amounting Rs.67,47,094.44/- up to 28.09.2021.

2. The Respondent Company M/s. Kumar Food Industries Limited having CIN:L15310DL1991PLC043456 incorporated under the provisions of the Companies Act, 1956 is having its registered office situated at 71/1, Siraspur, New Delhi-110042. Since the registered office of the respondent corporate debtor is in New Delhi, this Tribunal having jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.

AVERMENTS BY THE APPLICANT

3. Succinctly stated facts of the present case as averred by the applicant are that the Applicant and the Corporate Debtor had executed an “Agreement for Processing” dated 10.01.2018 for supply of the wheat flour and the same had expired on 09.01.2020. However, even after expiry of the said Agreement, the Corporate Debtor used to issue separate purchase orders to the Applicant and the Applicant in accordance with those purchase orders, supplied the goods to the Corporate Debtor. The Applicant submitted that a running account ledger was maintained for the supplies made to the Corporate Debtor and goods worth Rs.30,33,47,789/- were supplied to the Corporate Debtor, on account of which the Corporate Debtor had made part payment of Rs. 28,71,60,709.88/- only, leaving behind unpaid debt of Rs. 1,61,87,079.12/-.



4. The Applicant further submitted that the statutory Demand Notice dated 29.09.2021 under Section 8(1) of the Code, 2016 was issued to the Corporate Debtor demanding the outstanding operational debt and the same was received by the Corporate Debtor. The Corporate Debtor on receipt of the Statutory Demand Notice had issued a Reply dated 06.10.2021 raising frivolous issue of arbitration as provided under the 'Agreement of Processing' dated 10.01.2018, which does not amount to existence of any dispute.

REPLY BY THE CORPORATE DEBTOR

5. In the reply filed by the Corporate Debtor, it was submitted that the alleged default as claimed by the applicant have occurred during the Section 10A period, during which the CIRP proceedings have been suspended. It was submitted that the present application is not maintainable and is liable to be dismissed outrightly.
6. The Corporate Debtor further submitted that the present application is an afterthought and counterblast of the arbitration proceedings initiated by the Corporate Debtor. The Corporate Debtor submitted that the material supplied by the Applicant was of sub-standard quality due to which several complaints were received by the Corporate Debtor from its end users and the Corporate Debtor had brought the issues in knowledge of the Applicant. Also, the Applicant, despite several warnings by the Corporate Debtor, had failed to maintain the quality, resultant to which the Corporate Debtor had invoked arbitration proceedings.
7. Moreover, the Corporate Debtor in its reply dated 06.10.2021 to the Demand Notice issued by the Applicant had informed the Applicant that arbitration proceedings have already been commenced and the applicant was called upon to nominate the arbitrator vide notice dated 15.08.2021.



REJOINDER FILED BY THE APPLICANT

8. The Applicant had filed rejoinder wherein the submissions of the Corporate Debtor was rebutted and it was submitted that Applicant had replied to the arbitration notice dated 15.08.2021 vide reply dated 27.08.2021, wherein it was stated that 'Agreement for Processing' dated 10.01.2018 as relied by the Corporate Debtor for invoking arbitration has no relevance and connectivity as the debts claimed in the present petition are independent of the 'Agreement for Processing' dated 10.01.2018.

9. The Applicant further submitted that complaints raised by the Corporate Debtor are only minuscule approximately amounting to less than 0.001% as compared to the quantities of goods supplied. Also, the nature of the complaints are the result of the long storage or exposing the goods to sun or moisture by the customer, therefore, there-exists no pre-existing dispute between the parties.

ANALYSIS AND FINDING

10. We have heard Ld. Counsels for both the parties and perused the averments made in the application, as well as the reply and rejoinder filed by the parties. The relevant documents annexed with the respective submissions have been examined. Before examining the matter on its merits prima facie, it is relevant to examine the issue of maintainability of the present petition in the light of the provisions of section 10A of the I&B Code 2016.

11. Further going into the legislative intent as reflected in the proviso to Section 10A of the Code, which stipulates that "no application shall ever



be filed” for the initiation of the CIRP “for the said default occurring during the said period, it is noticed that the expression “shall ever be filed” is a clear indicator that the intent of the legislature is to bar the institution of any application for the commencement of the CIRP in respect of a default which has occurred during 25.03.2020 to 24.03.2021 and therefore, Section 10 A of the Code, 2016 bars the filing of an application in a situation, where the default has occurred during the period from 25.03.2020 to 24.03.2021.

12. On perusal of Part –IV of Form 5 of the present application, we observe that the operational debt of Rs.2,29,34,173.56/- which includes principal amount of Rs.1,61,87,079.12/- and interest amounting Rs.67,47,094.44/- arises out of the purchase orders issued between 24.11.2020 to 28.11.2020 and the invoices issued between 01.12.2020 to 31.12.2020. Also, on perusal of the terms and conditions of the said invoices, we observe the condition that “Interest @ 24% p.a., will be charged if payment is not received within 15 days of Delivery.” The said term clearly provides that the invoices become due immediately from the date of delivery of Goods and to be paid within 15 days of delivery of Goods.
13. We further refer to the definition of the term ‘default’, which is defined under section 3(12) of the code, 2016. The same is reproduced below, for the sake of ready reference: -

“3. Definitions -

(12) “default” means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not [paid] by the debtor or the corporate debtor, as the case may be;”



14. The Applicant in Row 2, Part IV of Form—5 of the present application which provides for the Date of Default had without mentioning any dates first, mentioned that the, “debt fell due on the date of delivery of the Goods”. Therefore, relying upon the facts of the case, arguments advanced by both parties and the documents mentioned herein above, this Adjudicating Authority is of the view that in the light of provisions of Section 10A of the Code, 2016, the facts of the present case are such that the provisions of Sec 10A are clearly attracted in the present case as the dates of default in this case admittedly fall within the shadow period of Section 10A of the Code, 2016.

15. As per Sec 10A, no IBC proceedings can be initiated against the Corporate Debtor for the default which has occurred between the period from 25/03/2020 till 24/03/2021, keeping in view the extended period of Sec 10A. Accordingly, the present Company Application i.e., C.P.(IB)733/2021, filed under Section 9 of the Code, 2016 cannot succeed and is hereby dismissed.

16. The rights of the applicant before any other judicial forum shall not be prejudiced on the grounds of dismissal of the present petition in view of insertion of Sec 10A of I&B Code, 2016 as it is barred by law,.

17. Resultantly, the present petition (Company Petition No. (IB)-**733(ND)/2021) stands dismissed.** No order as to the costs.

Copy be given to the respective parties as per rules.
File be consigned to records.

Sd/-
(DR. BINOD KUMAR SINHA)
MEMBER (T)

Sd/-
(P.S.N. PRASAD)
MEMBER (J)