

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

**C.P. (IB) No. 1549/KB/2018**

**In the matter of:**

**An application for initiation of corporate insolvency resolution process by an Operational Creditor under Section 8 & 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:**

**M/S. SEABOARD SPECIAL CROPS INDIA PRIVATE LIMITED of 1-10-68/4, 301 Srinivasa Nilayam Chikoti Garden, Begumpet, Hyderabad – 500016.**

**... Operational Creditor**

**Versus**

**In the matter of :**

**M/S. RAVI COMMODITIES PRIVATE LIMITED, of Room No. 72, 3<sup>rd</sup> Floor, 5 Clive Row, Kolkata 700001.**

**.....Corporate Debtor**

**Date of pronouncement of order : 17/01/2020**

**Coram: Shri Jinan K.R, Hon'ble Member (Judicial) &**

**Shri Harish Chander Suri, Hon'ble Member (Technical)**

**Counsel on Record :**

1. MR. JISHNU CHAUDHURY, Advocate ]  
2. MR. DEBDUT MUKHERJEE, Advocate ]  
3. MR. RATUL DAS, Advocate ] For Operational Creditor  
4. MR. TAPAN SIL, Advocate ]

1. MR. SOURAV MUKHERJEE, Advocate ]  
2. MS. ANJANA BANERJEE, Advocate ] For Corporate Debtor

**ORDER**

**Per Shri Harish Chander Suri, Hon'ble Member (T).**

1. This petition under Section 9 of the Insolvency & Bankruptcy Code, 2016 has been filed by **M/s. Seaboard Special Crops India Private Limited**, through One of its Directors Mr. Somnath Bera, authorized vide Board Resolution/Power of Attorney dated 03.09.2018, hereinafter referred to as the "**Operational Creditor**" seeking initiation of Corporate Insolvency Resolution Process against **M/s. Ravi Commodities Private Limited**, having its registered office at Kolkata, hereinafter referred to as the "**Corporate Debtor**".
2. It is submitted in the application that there were three contracts dated 17<sup>th</sup> January, 2018, 22<sup>nd</sup> January, 2018 and 1<sup>st</sup> February, 2018 in terms of which the Operational Creditor had supplied diverse quantities of Canadian whole red lentil crimson type in bags to the

Corporate Debtor and the delivery was made at its warehouse at Kolkata.

3. It is submitted that the Operational Creditor had raised 17 numbers of tax invoices as detailed in the application. The Corporate Debtor had received the goods and invoices without any objection, demur or protest and there has never been any dispute raised regarding the supplies. The Corporate Debtor, however, made part payment of Rs.1,24,07,806/- (Rupees One Crore Twenty Four Lacs Seven Thousand Eight Hundred and Six Only), thereby leaving a balance of Rs.64,05,750/- (Rupees Sixty Four Lacs Five Thousand Seven Hundred Fifty Only).
4. It is submitted that the aforesaid principal outstanding amount would carry interest @ 24% p.a. to the tune of Rs.5,76,518/- (Rupees Five Lacs Seventy Six Thousand Five Hundred Eighteen Only) which would raise the total outstanding debt to Rs.69,82,268/- (Rupees Sixty Nine Lacs Eighty Two Thousand Two Hundred Sixty Eight Only) till 31<sup>st</sup> August, 2018.
5. It is submitted that the default in payment has arisen from 16<sup>th</sup> March, 2018. The Operational Creditor has submitted that as per the sale confirmation letter, the payment was to be made within 10 days from the date of invoice. The Operational Creditor repeatedly raised the demand for the payment and finally a demand notice dated 10<sup>th</sup> September, 2018 was issued in Form 3 to the Corporate Debtor and a

reply dated 20<sup>th</sup> September, 2018 was received by the Operational Creditor from the Corporate Debtor. Paras 6(a) & (b) appear to be relevant and are reproduced hereunder:-

*6(a). In or about September, 2017 Seaboard Special Crops, a company incorporated in the USA (hereinafter referred to as 'Seaboard USA'), and your client, jointly approached Ravi Commodities Private Limited, our Company, for selling split chick peas. While approaching our company, your client had shown a sample and assured to deliver the goods in conformity with the specifications of such sample. It was represented by Seaboard India and Seaboard USA that they would procure goods of such quality from one Agrigrain of Australia and the same would directly be imported in favour of our company.*

*(b) Upon being satisfied with the representation made by Seaboard India and Seaboard USA, and after seeing the sample shown, our company agreed to enter into the transaction with Seaboard India and Seaboard USA, jointly. Accordingly, 8FCL of goods had been imported by our company through 2 shipments, being 4FCL each".*

6. The Operational Creditor has further filed Bank statement to indicate that no payment has been received after the service of demand notice. The Operational Creditor has also filed affidavit under Section 9 (3)(b), and para (h) there-of is relevant for the purpose of fair decision in the matter.
7. The Operational Creditor has not proposed the name of any Insolvency Professional to act as IRP.
8. In the reply affidavit filed by the Corporate Debtor through One of its Directors Mr. Mahesh Kumar Gupta, it is submitted that the

Operational Creditor has deliberately suppressed the material facts and the proceedings are barred by the principles of estoppel, acquiescence and waiver.

9. It is submitted that the Corporate Debtor is engaged in the business of import, export and trade of pulses. Seaboard Special Crops (in short 'Seaboard USA') is a company incorporated in the United States of America and carrying on the business of export and import of different products including pulses and edible goods throughout the world over more than 20 years. Similarly, Seaboard Special Crops India Limited (in short 'Seaboard India'), the Operational Creditor herein is a Company incorporated in India. It is submitted that the Corporate Debtor has been carrying on business on regular basis with both the Companies i.e. Seaboard USA and Seaboard India since August 2012.
10. It is submitted that in September, 2017 both these Companies jointly approached the Corporate Debtor for selling and delivering of lentils/split chick peas of 8 FCLs and Mr. Somnath Bera representing Seaboard India had shown a sample and assured to deliver the goods in conformity with the specifications of such sample. It was represented by both Seaboard USA and Seaboard India that they would procure goods of such quality from Australia, and the goods would be directly imported in favour of the Corporate Debtor.
11. It is stated that, on the satisfactory representation made by

these two companies, the Corporate Debtor agreed to enter into transactions with them jointly. Pursuant there-to, a printed agreement containing the name and logo of Seaboard USA had been brought by the said Mr. Somnath Bera to the Corporate office of the Corporate Debtor and agreement has been executed at the Corporate Office of the Corporate Debtor. Both the Companies i.e. Seaboard India and Seaboard USA were aware of the said goods being imported only with a view to earn profit upon selling the same for human intake and exploiting commercially. Accordingly, 8FCL of goods had been imported by the Corporate Debtor vide 2 shipments, being 4FLC each, sold and delivered by Seaboard India and Seaboard USA, jointly.

12. It is submitted that immediately after arrival of the consignment on 20<sup>th</sup> November, 2017, the officials of FSSAI visited the warehouse where the goods had arrived and were kept and collected the sample on random basis upon opening the containers for testing quality of the consigned goods in the laboratory of the choice of FSSAI and thereafter vide report dated 23<sup>rd</sup> November, 2017 the said Reliable Analytical Laboratories Private Limited has reported that the said sample did not conform to the tested parameters as per Cl. 2.4.6.9 of FSSR 2011 and as such the samples failed.
13. It is submitted that the Corporate Debtor became compelled to reject the goods imported under the 2<sup>nd</sup> shipment and thereafter on 8<sup>th</sup> December, 2017 these facts had been brought to the notice of both





the Companies by the Corporate Debtor with a request to take necessary curative measures. By e-mail dated 28<sup>th</sup> December, 2017 the Corporate Debtor had forwarded a copy of the said Analysis Report dated 19<sup>th</sup> December, 2017 to Seaboard India. On the same date by another e-mail the Corporate Debtor communicated to Seaboard India that the cargo was lying at port CFS and since the goods did not conform to the contractual conditions, both these companies would be held responsible for all the cost that might be incurred including the cost already paid. The Corporate Debtor requested both the Companies to take prompt action in-as-much as it was being subjected to demurrage charges beside other charges.

14. It is stated by the Corporate Debtor that on adhoc basis, the Corporate Debtor had assessed that a sum of about Rs. 65 lacs was due and payable by both Seaboard USA and Seaboard India in favour of the Corporate Debtor and they were jointly and severally liable to make good all the losses of the Corporate Debtor in respect of these goods.

15. It is submitted that by a letter dated 26<sup>th</sup> April, 2018 Seaboard India purportedly communicated that it is a separate legal entity and thus no claim on account of Seaboard USA should be set off from the entitlement of Seaboard India. Thereby Seaboard India made a claim of the said sum of Rs. 64,05,750/- against the Corporate Debtor and called upon the Corporate Debtor to make the payment of the same

in favour of Seaboard India immediately. Thereafter by e-mail dated 16<sup>th</sup> May, 2018 Seaboard USA contended that Seaboard India is a separate legal entity and the Corporate Debtor should not exercise its right of set off as against it.

16. It is stated in the reply affidavit that at all material times both these Companies had acted jointly and sold and delivered the said goods to the Corporate Debtor after obtaining the same from their Australian counter parts and thus had breached the contractual terms by exporting poor quality of edible goods unfit for human consumption. It is submitted by the Corporate Debtor that there is existence of dispute between the parties and the Tribunal is to dismiss the application.
17. In the rejoinder affidavit the Operational Creditor repeated and reiterated the contents of the application and submitted that the allegations made in the reply affidavit have been made to misrepresent and mislead this Tribunal. It is submitted that the agreements mentioned in the reply affidavit are between the Operational Creditor and the Corporate Debtor only and none other party has any privity to the said agreement.
18. It is submitted that the Corporate Debtor had purportedly relied on 8 transactions with Seaboard USA carried out in or around November, 2017 and therefore the attempt of the Corporate Debtor to litigate expenses of a dispute in respect of the instant transactions

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between the Operational Creditor and the Corporate Debtor is misconceived and after thought. There is, therefore no existence of any dispute in relation to the transactions between the Corporate Debtor and the Operational Creditor.

19. We have heard the Ld. Counsel for both the parties. The Ld. Counsel for the Operational Creditor took us through each and every documents placed on record and has been able to clearly prove that there were transactions as stated in the application between the Operational Creditor and the Corporate Debtor only for which the payment was due, which the Corporate Debtor failed to make and committed default. The Operational Creditor has complied with all the requirements of the relevant provisions as regards Section 9 application under the Code. On the other hand, the Ld. Counsel for the Corporate Debtor could not produce any document connecting the Seaboard Special Crops India (in short Seaboard India) in its transactions with Seaboard Special Crops (in short 'Seaboard USA'). In spite of repeated enquiry and insistence, he could not produce anything or refer to any clause which would bind the Seaboard India or any right of the Corporate Debtor to make the set off against the dues and debts owed by the Corporate Debtor from the debt due to the Operational Creditor.

20. It must be understood that under the Corporate Law, each Company is a separate Corporate entity even though one or more of

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its Directors may be common. In the present case also, the Corporate Debtor had transaction with the Operational Creditor and similarly might have had some transaction with Seaboard USA and might have been communicating with a common Director also but the transactions that had in fact taken place between the Operational Creditor and the Corporate Debtor herein were strictly as per the agreements between these two and the Seaboard USA was nowhere in the picture. The Corporate Debtor therefore, cannot find fault with the Operational Creditor for any alleged dispute or default on the part of any 3<sup>rd</sup> company i.e. Seaboard USA. The Ld. Counsel for the Corporate Debtor failed to prove any plausible defence against the present application. The debt due has admittedly come out of the transactions between these parties under the three agreements and the Corporate Debtor has committed default in clearing those debts when due.

21. The Ld. Counsel for the Operational Creditor has submitted that there was no dispute with regard to quality, quantity or anything and there is no defence available to the Corporate Debtor at all and if the Corporate Debtor had any transaction with Seaboard USA, the present Operational Creditor has nothing to do with that and it cannot be made to suffer for any dispute between the Corporate Debtor and the Seaboard USA.

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22. The defence of the Corporate Debtor to have a set off as stated in its reply is superficial in nature and cannot stand the test of genuineness and fair play. In the absence of any reasonable ground of challenge, available to the Corporate debtor, the application of the Operational Creditor is bound to succeed. In the aforesaid circumstances we admit the petition and pass the following orders:-

### **ORDERS**

- 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. Ravi Commodities Private Limited** is hereby **admitted**.
- ii) We hereby 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 judgement, 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 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 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.
- 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 financial 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 the 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) **Mr. Soumendra Podder**, of 1/427 Gariahat Road (South), Kolkata 700068, having registration number **IBBI/IPA-001/IPP00446/2017-18/10789**, e.mail id: **soumenpodder@hotmail.com**, **Mobile No. 9831085179**, is hereby appointed as Interim Resolution Professional by this Tribunal for ascertaining the particulars of creditors and convening a meeting of Committee of Creditors for evolving a resolution plan subject to production of written consent within one week from the date of receipt of this order.
- x) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall


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identify the prospective Resolution Applicant within 105 days from the insolvency commencement date.

- xi) The Operational Creditor is directed to deposit Rs.5,00,000/- (Rupees Five Lacs Only ) in the ESCROW Account in SBI to be operated through the Registrar NCLT, Kolkata Bench, for the purpose of meeting the preliminary expenses for initiating the CIR Process by the IRP. IRP can claim the preliminary expenses and fees subject to the approval by the CoC and after constitution of CoC.
- xii) Registry is hereby directed 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.
- xiii). List the matter on **18.02.2020** for filing of the progress report.
- xiv) Certified copy of the order/Free copy may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

  
(Harish Chander Suri)  
Member (T)

  
(Jinan K.R.)  
Member (J)

Signed on this, the 17<sup>th</sup> day of January, 2020.

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