NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH

(IB)-2161 (ND) 2019

In the matter of

MR. ARUN KUMAR GOEL
Proprietor of: M/s Har Swaroop Traders
4047, 3rd Floor, Naya Bazar,
Delhi-110006 **......Operational Creditor**

VERSUS

M/S ANKUR ROLLER FLOUR MILLS PVT. LTD.
CIN: U15311DL2004PTC128271
Registered Office: G-5, Lawrence Road,
Delhi-110035 **......Corporate Debtor**

SECTION: 9 of IBC, 2016

Order delivered on: 25.11.2019

CORAM:
MS. INA MALHOTRA, MEMBER (JUDICIAL)
MS. SUMITA PURKAYASTHA, MEMBER (TECHNICAL)

PRESENT- Mohit Nandwani and Snigdha Lal, for the Petitioner

CS Anjali Yadav, for the Respondent

ORDER

Per Ms. Sumita Purkayastha (Member Technical)

1. The present petition has been filed invoking the provision of Section 9 of the Insolvency & Bankruptcy Code, 2016.

2. The Operational Creditor is engaged into trading and supplying of various types of grains and pulses to traders, processors and exporters in India. The Corporate Debtor is a trader, supplier and exporter of grain mills products, starches and starch products, and prepared animal feeds. The Corporate Debtor approached Operational Creditors few years ago to supply various types of grains and pulses for processing and further supply to its customer. Since then, the Operational Creditor is supplying various types of grains and pulses to Corporate Debtor based on their verbal orders on the payment terms of 45 days credit.

3. As per the averments made in the Application, during initial period, Corporate Debtor made payments on time but later on payments were delayed. The Corporate Debtor verbally placed an order for supply of Grains and pulses and promised to pay the outstanding amount of Rs. 240,906/-. On 22.03.2018, the Operational Creditor based on verbal purchases order supplied the grains and pulses for an aggregate amount of Rs. 2,83,87,500/- vide invoice nos. 1140, 1141, 1142, 1143, 1144, 1147, 1148 and 1149.

4. The Corporate Debtor made four payments of Rs. 25,00,000/- each on 13.04.2018, 16.04.2018, 16.04.2018 and 17.04.2018 respectively. The total amount outstanding after above payments was Rs. 1,86,28,406/-. As per the averments made in the Application, from May, 2018 to July, 2019, the Operational Creditor kept following up with Corporate Debtor for payment of outstanding but always got only

verbal assurances. No payment was made by Corporate Debtor to the Operational Creditor against the amount outstanding.

5. Thereafter, Demand Notice dated 17.07.2019 was sent to the Corporate Debtor in Form-3 under the Insolvency and Bankruptcy Code, 2018 demanding payment in respect of unpaid operational debt due to the Corporate Debtor. Upon receipt of notice, the Corporate Debtor in its reply dated 30.07.2019 raising a dispute for supply of defective material vide invoice nos. 1140, 1141, 1142, 1143, 1144, 1147, 1148, 1149 dated 22.03.2018 amounting to Rs. 2,83,87,500/.

6. The Corporate Debtor, in its reply dated 25.09.2019, admitted the receipt of material supplied by the Operational Creditor. However, the Corporate Debtor was not able to remit the amount on agreed dated due to lack of liquidity at its end. The Corporate Debtor averred in its reply that the Corporate Debtor has well informed the Operational Creditor on probable delays in payments due to unfavorable market conditions, demonetization and application of taxes under GST on agro products which were not levied under the VAT regime. The Corporate Debtor has suffered heavy business losses and fall of reputation in the market due to sub-standard quality of material supplied by the Operational Creditor, but never raised its concern or any dispute with Operational Creditor due to their long business association. Also. The Corporate Debtor has communicated to the Operational Creditor about the planned payment schedule to be commenced after improvement in business conditions, however, the

Operational Creditor has not reverted back on the proposal and instead filed this petition against the Corporate Debtor.

7. In view of the Corporate Debtor's failure to reduce or liquidate its liability, the present petition has been filed in the required format praying for initiation of the Corporate Insolvency Resolution Process of the Corporate Debtor. Affidavit in compliance under Section 9(3)(b) of Code are on record to corroborate his case.

8. We have gone through the documents filed by parties. While going through the documents Tribunal observed that the Corporate debtor liable to pay the default amount of Rs. 1,86,28,406/- as shown in the reply to the Demand Notice dated 29.07.2019 in annexure-4 and admits the same. Vide order dated 07.11.2019 and in its reply dated 25.09.2019, the Ms. Anjali Yadav, CS and authorized representative of the Corporate Debtor admit the claim of the petitioner and states that on account of financial difficulties, it is unable to liquidate the outstanding dues. Keeping in view of the categorical admission made by the Ms. Anjali Yadav, CS and authorized representative of the Corporate Debtor and her submission that the Corporate Debtor is unable to liquidate the debt in the petition raised for grant of the prayer made in the present petition. Considering the circumstances this Tribunal is inclined to admit this petition and initiate CIRP of the Respondent. Accordingly, this petition is admitted. A moratorium in terms of Section 14 of the Insolvency & Bankruptcy Code, 2016 shall come into effect forthwith staying:-

(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 debt or 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 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.

Further:

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

(3) 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. (4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

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."*

8. The Operational Creditor has proposed the name of IRP. Accordingly, we appoint Mr. Rakesh Kumar Jain, an Insolvency Professional, registration no. IBBI/IPA-001/IP-P01297/2018-19/12068 email-rakeshjainca@rediffmail.com duly empanelled with the IBBI as the IRP. He is directed to take such steps as are mandated under the Code, more specifically under Sections 15, 17, 18, 20 and 21 and shall file his report before the Adjudicating Authority.

9. The Operational Creditor is directed to deposit a sum of Rs. 2 lakhs to meet the immediate expenses of IRP. The same shall be fully accountable by the IRP and shall be reimbursed by the CoC, to the Operational Creditor to be recovered as CIR costs.

10. Copy of the order be sent to both the parties as well as to the IRP.

11. To come up on for further consideration.

Sumita Purkayastha
Member (T)

Ina Malhotra
Member (J)