

V IN THE NATIONAL COMPANY LAW TRIBUNAL,

KOLKATA BENCH,

KOLKATA

C.P (IB) No.1601/KB/2019

In the matter of

An application under 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:

Metro Cash & Carry India Private Limited, having its office at Survey No. 26/3, A Block, Ward No. 9, Industrial Suburbs, Subbramanyanagar, Banglore- 560055.

... Operational Creditor

Versus

In the matter of:

Synergy Kitchens & Hospitality Private Limited, having its registered office at 446/3, Lake Gardens,Kolkata-700045, West Bengal.

...Corporate Debtor

And

Order Reserved on : 30/08/2021

Order Pronounced on :25/11/2021

Coram:

Mr. Rajasekhar V.K., Member (Judicial)

Mr. Harish Chander Suri, Member (Technical)

Counsels appeared through Video Conference

1. Mr Victor Dutta. Adv. } For the Operational Creditor

1. Mr.Arik Banerjee, .Adv. } For the Corporate Debtor

2. Mr. Rajib Mullick, Adv.
3. Mr. Rakesh Sarkar, Adv.

ORDER

Per: Harish Chander Suri, Member (Technical)

1. The Court is convened by video conference today.
2. This petition under section 9 of the IBC has been filed by **Metro Cash & Carry India Private Limited**, CIN: U51909KA2001PTC028483, a corporate entity, having its registered office at Survey No. 26/3, A Block, Ward No. 9, Industrial Suburbs, Subbramanyanagar, Bangalore- 560055. (hereinafter referred as the Operational Creditor) through its Directors Finance and authorised signatory Ms. Suniana Calapa, seeking initiation of corporate insolvency resolution process in respect of **Synergy Kitchens & Hospitality Private Limited**, CIN: U15135WB2008PTC122942 another corporate entity, having its Registered Office 446/3, Lake Gardens, Kolkata-700045, West Bengal, (hereinafter referred as the Corporate Debtor).
3. It is submitted that the Operational Creditor had supplied diverse kinds of food articles like vegetables, fruits, spices, rice, pulses, meat and fish etc. to the Corporate Debtor upon orders placed by the Corporate Debtor from time to time. The parties have entered into an agreement dated 15th June, 2017 vide which the Operational Creditor supplied the goods as per mutually agreed terms and conditions mentioned in the agreement and raised invoices and also provided bill discounting facility, in addition to the bill of exchange/ sales /bills discounting terms. It is submitted that the Operational Creditor continuously followed up with the Corporate Debtor for immediate payments of the unpaid invoices annexed with the petition collectively marked with letters B to R. The Operational Creditor sent various emails to the Corporate Debtor from time to time and the Corporate Debtor confirmed the debt through email

and sought some time to make payment of the outstanding dues but none of the debts was being honoured by the Corporate Debtor and no payment received after the debt fell due from the Corporate Debtor irrespective of assurances and acknowledgement from the Corporate Debtor from time to time. The emails are attached with the petition and marked as "S". When the payment was not received, the Operational Creditor had to issue Demand Notice under section 8 of the Code on July 30,2019, which was duly received by the Corporate Debtor on 1st August, 2019. A copy of the Demand Notice and the track delivery report are annexed with the petition as Annexure-"T". The Corporate Debtor, however, vide its letter dated 5th August 2019 replied to the Demand Notice and accepted the outstanding payment in connection with the invoices and the agreement . It is stated that in para (f) of the reply, the Corporate Debtor has accepted that tentative plans were given vide emails in order to enable them to liquidate the dues. The Corporate Debtor, however, has raised disputes which according to the Operational Creditor are completely an afterthought. Copy of the reply dated 5th August, 2019 is annexed as Annexure- V. It is submitted that the amount of Rs.5,66,09,485/- along with interest @ 18% pa had fallen due on 1st June, 2019. On the basis of which, the present petition has been filed for initiation of CIRP against the Corporate Debtor.

4. The Operational Creditor has not proposed any name of the IRP.
5. In reply affidavit filed by the Corporate Debtor through Mr.Dennis Das, an authorized signatory of the Corporate Debtor, it has, inter alia, been stated that the application is an abuse of the process of law, and is a mala fide and vexatious proceeding. It is stated that the Operational Creditor has not approached this Tribunal with clean hands and does not deserve any relief because it suffers from gross suppression of material facts. It is further stated that the Operational Creditor has no locus standi to institute and there is no cause of action to file the present petition. It is further alleged that the claims are barred by

estopple, waiver and acquiescence.

6. The Corporate Debtor has further submitted that on several occasions there were serious deficiency in the quality and rates of the products supplied by the Operational Creditor and by way of diverse emails issued by the Corporate Debtor from time to time from, 2017 to 2019, it had been brought to the notice of the Operational Creditor that the product was not only inferior and substandard but there was short supply of products by the Operational Creditor. It is submitted that the emails had been exchanged between the parties evidencing the existence of serious and genuine pre existing disputes, as has been collectively annexed as Annexure-A to the reply and that these emails have been suppressed by the Operational Creditor with an intention to mislead this Tribunal and create a false impression that the transactions between the parties were free of disputes.
7. It is submitted in the reply affidavit by the Corporate Debtor that the Operational Creditor would supply the products to the Corporate Debtor and raise bills thereafter for the value of such supplies on the basis of the price agreed between the parties and would submit the same to the Corporate Debtor for acceptance. However, it is a matter of record that the applicant had availed of bill discounting facilities from its bankers whereby a bill of exchange would be drawn in connection with the sale of goods and supply of services to the Corporate Debtor covered under a bunch of invoices at one time. Under this facility, the Operational Creditor would be paid a pre agreed discounted amount by the bank in lieu of the sums receivable by the applicant from the Corporate Debtor and thus the bank would purchase the bills in question and thereafter, the bank would step into the shoes of the applicant for the purpose of recovering the bill value being the value of each bill of exchange covering several invoices from the Corporate Debtor. It is stated that certain payments however, had been made directly to the Operational Creditor but such payments were made for and on behalf of its bank i.e. HSBC

Bank towards payment on account of bills of exchange accepted by the Corporate Debtor and purchased by HSBC and the same cannot amount to conferring any cause of action on the Operational Creditor to recover any purported dues from the Corporate Debtor. The Corporate Debtor denies that there was any default as alleged and submitted that no amount can be claimed by the Operational Creditor from the Corporate Debtor and there is no outstanding or unpaid operational debt due from the Corporate Debtor at all. All the invoices are covered by the bills of exchange, where the amounts under the invoices are realizable by HSBC bank and not by the Operational Creditor.

8. It is stated that in reply to the Demand Notice, the Corporate Debtor has specifically placed on record the fact of pre-existing disputes and also the fact that the amount recoverable was not the applicant's concern. Therefore, it is submitted that the Demand Notice itself is bad in law or on facts and the application is not maintainable. It is stated that the Corporate Debtor does not admit any of the documents disclosed in the application and therefore, the application should be dismissed in limine with costs.
9. Coming back to the petition and its annexures, the Operational Creditor has in its Demand Notice dated 30th July, 2019 duly served upon the Corporate Debtor has explained in details each and every aspect required to be mentioned and the total amount claimed is stated to be Rs. 6,02,66,486/-
10. It is very interesting to note that the Corporate Debtor itself admits that it had offered to pay an amount in full and final settlement of the transactions in the 2019 but in the same breath says that the payment was to be made to the HSBC and not to the applicant directly, as a result of the agreed bill discounting procedure followed at all times by the parties. It is not understood how the Corporate Debtor is concerned with the bill discounting transactions between the Operational Creditor

and its bankers. There was no tripartite agreement or an agreement or understanding of that sort among the three. If at all there was such an arrangement, it was between the Operational Creditor and its Bankers. The Corporate Debtor could not have been in the picture and in fact was accepting the supplies from the Operational Creditor, for which payment was to be made by the Corporate Debtor and admittedly the supplies have been accepted and the amount of debt outstanding has been acknowledged in their reply filed before this Adjudicating Authority.

11. In these circumstances, the Demand Notice as alleged is not bad in law. The Operational Creditor has filed all the relevant documents along with the petition including the Demand Notice under section 8 of the IBC, which has been duly served upon the Corporate Debtor. The Corporate Debtor has not been able to prove any existing disputes between the parties before the service of the Demand Notice under section 8 of the IBC.
12. Even if the amount has already been received by the Operational Creditor by bill discounting agreement, the Corporate Debtor cannot raise this objection because if such an objection or claim can be raised, it can be done by the Bank only and not by the Corporate Debtor
13. It would be seen from the emails enclosed with the reply affidavit that the parties did not have any serious dispute. The only content reflected from the emails is friendly talk on fixation of rates of all supplies made by the Operational Creditor to the Corporate Debtor and there is hardly anything which could be called as pre-existing disputes.
14. In view of the pleadings filed by the parties before this Adjudicating Authority, we are convinced that the petition deserves to be admitted as there is outstanding debt to the tune of Rs. 5,66,09,485/- from the date the debt fell due in terms of agreement made between the parties, dated

15/06/2017, total whereof comes to Rs. 6,02,66,486/- out of which a sum of Rs. 95,00,000/- is stated to have been already paid by the Corporate Debtor to the Operational Creditor, along with interest @ 18% per annum.

15. Since the application is complete in all respects and all the ingredients for filing of petition under 9 IBC are fulfilled, this petition deserves to be admitted and we order accordingly in terms of the following:

O R D E R S

- 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, **Synergy Kitchens & Hospitality Private Limited** is hereby **admitted**.
- ii) We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.
- iii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The I.R.P. 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 Securitisation 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 essential goods or services rendered to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during the 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. Madhusudan Kumar Poddar** registered with Insolvency and Bankruptcy Board of India, having Registration No **IBBI/IPA-001/IP-P02173/2020-2021/13344**, E-mail ID: madhusudan.ca.85@gmail.com. and holding AFA under Regulation 7-A of the IBBI (Insolvency Professionals) Regulations, 2016, is hereby appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a 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 identify the prospective Resolution Applicant within 105 days from the insolvency commencement date.
- xi) The Operational Creditor/Applicant is directed to deposit **Rs. 50,000/- (Rupees Fifty Thousand only)** with the IRP appointed hereinabove within three days from this order. IRP can claim the preliminary expenses and fees subject to the approval by the CoC and after constitution of CoC.

16. Registry is hereby directed to communicate the order to the Operational Creditor, the Corporate Debtor, the I.R.P. and the jurisdictional Registrar of Companies by Speed Post as well as through email.

17. List the matter on **28/01/2022** for filing of **Progress Report**.

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

(Harish Chander Suri)
Member (Technical)

(Rajasekhar V.K.)
Member (Judicial)

Order signed on this the, 25th day of November, 2021

PJ.