

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI (COURT NO. IV)

Company Petition No. IB- 1422/ND/2018

(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:

M/s GANESH RICE & GENERAL INDUSTRIES

...Applicant/Operational Creditor

VERSUS

M/s UMACHI FOODS AND COMMODITIES PVT. LTD.

...Respondent/ Corporate Debtor

Pronounced on: 19.08.2019

CORAM:

DR. DEEPTI MUKESH

HON'BLE MEMBER (Judicial)

SHRI PRADEEP R. SETHI

HON'BLE MEMBER (Technical)

For the Applicant : Mr. Sameer Dawar, Adv.

For the Respondent: Mr. A.K. Gupta, Adv.

ORDER

DR. DEEPTI MUKESH, MEMBER (J)

1. The present application is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by M/s Ganesh Rice & General Industries (for brevity 'Operational Creditor') through its authorized representative Mr. Amolak Ram with a prayer to initiate the Corporate Insolvency process against M/s Umachi Foods and Commodities Pvt. Ltd.(for brevity 'Corporate Debtor').
2. The Operational Creditor namely M/s Ganesh Rice and General Industries is a company incorporated under the provisions of Companies Act, 1956 having its registered office at Khushalmajra Road Cheeka, Kaithal Haryana- 110036.
3. The Corporate Debtor namely M/s Umachi Foods and Commodities Pvt. Ltd. is a company incorporated on 18.03.2014 under the provisions of Companies Act, 1956 with CIN No. U51909DL2014PTC266446, having its registered office at Khasra 13/21, Ground Floor, Main GT

Karnal Road, Khampur, New Delhi- 110036. The Authorised Share Capital of the respondent company is Rs. 4,00,00,000/- and Paid Up Share Capital of the company is Rs. 2,00,00,000/- as per Master Data of the company.

4. It is the case of the Operational Creditor that Corporate Debtor approached the Operational Creditor for purchase of Basmati Sella Rice. It was orally agreed that upon receiving the goods by Corporate Debtor and raising of invoices by Operational Creditor, the entire payment for such invoices shall be made in a timely manner. The Corporate Debtor placed various purchase orders for supply of Basmati Rice. The Operational Creditor supplied the goods as per the orders placed by Corporate Debtor and raised invoices against the said supply and the said tax invoices were duly received and acknowledged by the Corporate Debtor
5. In spite of various requests made and reminders sent by the Operational creditor, the Corporate Debtor never bothered to reply nor paid outstanding dues hence the Operational Creditor sent a demand notice dated 27.07.2018 under Section 8 of the Insolvency and Bankruptcy Code, 2016 to the

Corporate Debtor asking it to make the payment of Rs. 82,00,000/- (Rupees Eighty-Two Lakhs only), being Rs. 68,08,385/- as principal amount and interest at the rate of 18% pa, within 10 days from receipt of the notice.

6. It is further submitted by the Operational Creditor that against the said supply of Rice, the Corporate Debtor issued a security cheque bearing number 000347 which was presented on 23.06.2018 on Kotak Mahindra Bank 17, Vaishali, Pitampura, New Delhi- 110088 for an amount of Rs.68,08,385/- in discharge of the above said liability and the said cheque has been returned unpaid/ dishonoured by the bank vide Return memo dated 26.06.2018.
7. In Part-IV of the present application, the Operational Creditor has given the details of the total amount of the Operational debt and the transactions on account of which the debt fell due.

PARTICULARS OF OPERATIONAL DEBT	
1. TOTAL AMOUNT OF DEBT	<p>Rs.82,00,000/- (Rupees Eighty-Two Lakhs only) plus interest @ 18% per annum till the date of realization of the debt.</p> <p>Date on which it fell due:</p> <p>23.06.2018 when the Operational Creditor supplied Pure Basmati Sella Rice to the Corporate Debtor.</p>
2. AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURED	<p>Rs.82,00,000/- (Rupees Eighty-Two Lakhs only) plus interest @ 18% per annum till the date of realization of the debt.</p> <p>The debt fell due on 23.06.2018.</p>

8. The Corporate Debtor vide its letter dated 27.07.2018 replied to the demand notice issued under Section 8 of the Insolvency and Bankruptcy Code, 2016 and disputed the amount claimed by the Operational Creditor. The corporate debtor has submitted that debt is disputed and not payable as the Operational Creditor failed to supply the ordered goods and misused the aforesaid security cheque and presented the same in bank without any authority.
9. The defense adopted by the Corporate Debtor to the present application filed under Section 9 is that the application is based upon forged and fabricated documents. The cheque no. 00037 was not issued for the alleged amount of Rs. 68,08,385/-. The Operational Creditor has illegally filled up the said cheque and presented the same without authority. The said security cheque was to be used only in case the Corporate Debtor fails to make the payment after the supply of goods by the Operational Creditor. However, the Operational Creditor failed to supply the ordered goods and misused the aforesaid security cheque and presented the same in bank without any authority. The Corporate Debtor stated that there

is dispute with respect to payment of said debt and same is not payable as no goods were received by the Corporate Debtor though the invoices have been acknowledged as are filed by the Operational Creditor are forged and fabricated.

10. A rejoinder to the reply has been filed by the Operational Creditor reiterating the submissions made in the application and controverting the assertions in the reply.
11. It is seen that the Corporate Debtor has neither filed any document to show that they had raised the issue of non-supply of goods with Operational Creditor anytime before receiving Section 8 notice in July 2018, though the supply of goods and invoices raised are from 24.04.2018 to 26.04.2018. It is further admitted by Corporate Debtor that security cheque was to be used in case of failure of payment by Corporate Debtor which was done by Operational Creditor when payment was not coming through. Corporate Debtor has neither lodged any complaint for so called forgery nor initiated any proceedings.

12. Facts which are material to the controversy raised with respect to 'pre-existing dispute'.

In ***"Innoventive Industries Ltd.(Supra)"***, the Hon'ble Supreme Court held that **pre-existing dispute is the dispute raised before demand notice or invoices was received by the 'Corporate Debtor'**. Any subsequent dispute raised while replying to the demand notice under Section 8(1) cannot be taken into consideration to hold that there is a pre-existing dispute.

Therefore, the reply given by the 'Corporate Debtor' only after the receipt of notice under Section 8 of the Code is to be ignored for finding out whether there is pre-existence of dispute or not.

13. Further the Hon'ble Supreme of India in **Mobilox Innovations Private Limited vs. Kirusa Software Private limited** held that a dispute truly exists in fact and is not spurious, hypothetical or illusory. Here there is no such dispute was pre-existing apart from that a hypothetical or illusory dispute which has been raised by the 'Corporate Debtor' while replying

to the demand notice served under Section 8(1) by the 'Operational Creditor'.

14. In view of the aforesaid fact, we hold that there is no 'pre-existing dispute' in the present case.
15. The applicant has attached the copy of the Bank statement issued by Oriental Bank of Commerce, Cheeka Branch for the period starting from 01.06.2018 to 04.09.2018 in compliance of Section 9(3).
16. The registered office of corporate debtor is situated in New Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
17. In the given facts and circumstances, the present application is complete and the Applicant is entitled to claim its dues, establishing the default in payment of the operational debt beyond doubt, and fulfillment of requirements under section 9(5) of the Code. Hence, the present application is admitted.
18. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016 moratorium as envisaged under the provisions of Section 14(1) shall follow in relation to the Respondent prohibiting proviso (a) to (d) of the Code. However,

during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come in vogue.

19. The Operational Creditor has not proposed the name of any Interim Resolution Professional. In view of the same, this Bench appoints Mr. Ajit Sood having registration no. IBBI/IPA-002/IP-N00709/2018-19/12146 having email address ajitsood14@gmail.com and contact number is 9955991001 as the IRP of the Corporate Debtor. The IRP is directed to take all such steps as are required under the statute, more specifically in terms of Sections 15,17,18,20 and 21 of the Code.
20. The IRP is directed to file his report within the statutory period as required under Insolvency and Bankruptcy Code, 2016.
21. The applicant/Operational Creditor shall deposit a sum of Rs. 2 lakhs in a separate account towards the immediate expenses to be incurred and accounted for by the IRP. The amount shall be reimbursed to Operational Creditor after the COC has approved the expenses of the IRP before appointing Resolution Professional.

22. A copy of the order shall be communicated to the Applicant as well as to the Respondent Company above named by the Registry. Further the IRP above named be also furnished with copy of this order forthwith by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records.

Sd/-

(PRADEEP R. SETHI)
MEMBER (TECHNICAL)

Sd/-

(DR. DEEPTI MUKESH)
MEMBER (JUDICIAL)

Pronounced today under Rule 151 of the NCLT Rules 2016 as Hon'ble Member (T), Sh. Pradeep R. Sethi is not holding Court today.

Sd/-

(Sh. A. K. PAL)
COURT OFFICER